Highlights Points saillants

Building on reform: Choices for tomorrow's pensions

March 1989

Perspectives des régimes de retraite: La réforme se poursuit

mars 1989

French translation by: Tessier Translations Corp., Ottawa
Traduction : Les Traductions Tessier, Ottawa

Ontario
Ministry of Financial Institutions
Ministère des Institutions financières

CONSULTATION ON PENSION REFORM

The Ontario government has published a consultation paper on pension reform, and over the next 60 days will be seeking input on the proposed reforms from interested groups. The government wishes the debate to be as widespread and comprehensive as possible and, through the consultation process, to increase public understanding of pension issues. This Highlights paper has been prepared to provide an overview of the basic policy proposals. Individuals wishing to receive more detailed information on the proposed reforms or to comment on the pension reform proposals may do so by writing to:

The Honourable Murray Elston
Minister of Financial Institutions
Consultation Draft
Ministry of Financial Institutions
555 Yonge Street, 8th Floor
Toronto, Ontario
M7A 2H6

Additional copies of this Highlights paper and the discussion paper and legislative consultation draft, Building on Reform: Choices for Tomorrow's Pensions, may be obtained from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario, M7A 1N8. In Windsor, copies can be obtained from the Windsor Public Library, 850 Ouelette Avenue, Windsor, Ontario, M9A 4M9 or in Ottawa from Access Ontario, 50 Rideau Street, Ottawa, Ontario, K1N 9J7.

CONSULTATION SUR LA RÉFORME DES RÉGIMES DE RETRAITE

Le gouvernement de l'Ontario a publié un document de consultation sur la réforme des régimes de retraite et, dans les 60 jours qui viennent, il désire obtenir les points de vue des groupes intéressés sur les réformes envisagées. Le désir du gouvernement est que le débat soit aussi étendu et approfondi que possible. Il souhaite, par le mécanisme de consultation, faire en sorte que la population connaisse mieux les questions relatives aux rentes. Nous avons dégagé du document les points saillants afin de donner aux intéressés un aperçu général des grandes orientations préconisées. Les personnes qui souhaitent recevoir plus de renseignements ou formuler des observations sur les projets de réforme peuvent le faire par écrit à l'adresse suivante :

L'honorable Murray Elston
Ministre des Institutions financières
Document de consultation
Ministère des Institutions financières
555, rue Yonge, 8e étage
Toronto (Ontario)
M7A 2H6

Vous pouvez vous procurer d'autres exemplaires des Points saillants, ainsi que du document de discussion et projet de réforme législative Perspectives des régimes de retraite : la réforme se poursuit à la Librairie du gouvernement de l'Ontario, 880, rue Bay, Toronto (Ontario) M7A 1N8. À Windsor, les personnes intéressées peuvent en obtenir des exemplaires à la Bibliothèque publique de Windsor, 850, avenue Ouelette, Windsor (Ontario) M9A 4M9 ou, à Ottawa, au kiosque Accès Ontario, 50, rue Rideau, Ottawa (Ontario) K1N 9J7.

Ontario's Pension Leadership Role

For Ontario, pension reform is a dynamic process. The original Pension Benefits Act, which came into effect in 1965, was the first provincial legislation in Canada to regulate employment pension plans. This legislation set minimum standards governing the vesting, funding and investment of pension plan benefits and assets. The introduction of the Pension Benefits Act, 1987 signified another milestone in the development of Ontario's pension framework. Pension coverage was expanded through the provision of membership eligibility for part-time workers and earlier plan membership, vesting and locking-in of benefits for full-time workers. The new Act also improved minimum standards governing survivor benefits, early retirement, shared employer and employee responsibility for contributions, and established the principle of mandatory inflation protection.

The proposals outlined in this discussion paper and accompanying draft legislation build on the reform consensus developed through the Pension Benefits Act, 1987, the Report of the Task Force on Inflation Protection for Employment Pension Plans, and the consultation process to date. It is recognized that initiatives related to employer-sponsored pensions are of significance to the public at large as well as plan sponsors, employees and special interest groups. It is important to take the opportunity to gain the views and suggestions of those who will be directly affected.

Policy Principles for Pension Reform

The proposals put forward for discussion are based on the following key policy principles:

- the protection of pension benefits within a sound economic and responsible fiscal framework;
- the provision of an effective administrative framework;
- the provision of equitable, modern and clear employment pension standards which reflect the needs of a changing society and economy;
- the allowance of sufficient time to allow plan sponsors, plan members and bargaining agents to adjust to pension reform requirements;
- the fostering and expansion of the voluntary employment pension plan system.

Leadership de l'Ontario en matière de régimes de retraite

En Ontario, la réforme des régimes de retraite est un mécanisme dynamique. L'ancienne Loi sur les régimes de retraite, qui est entrée en vigueur en 1965, était, au Canada, la première loi provinciale adoptée pour réglementer les régimes professionnels. Cette loi établissait des normes minimales régissant l'acquisition, le financement et l'investissement des prestations des régimes de retraite. La venue, en 1987, de la nouvelle Loi sur les régimes de retraite marquait un autre jalon dans le développement du système de retraite en Ontario. L'adhésion a été élargie grâce à une disposition autorisant l'accueil des travailleurs à temps partiel et des participants d'un régime antérieur, ainsi que par l'acquisition et le blocage des prestations. De plus, la nouvelle loi améliorait les normes minimales régissant les prestations de survivant, la retraite anticipée et le partage des responsabilités de cotisation des employeurs et des employés et s'engageait à rendre obligatoire la protection contre l'inflation.

Les propositions décrites au présent document et dans le projet législatif qui l'accompagne tirent parti du consensus qui s'est développé grâce à la Loi de 1987 sur les régimes de retraite, au Rapport du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation et aux résultats des consultations tenues jusqu'à maintenant. Il est évident que les initiatives qui touchent les régimes de retraite parrainés par les employeurs ont leur importance pour l'ensemble de la population, tout autant que pour les groupes de pression. Voilà pourquoi il faut saisir l'occasion d'obtenir le point de vue et les suggestions de ceux qui seront touchés directement.

Principes directeurs de la réforme

Les propositions mises de l'avant pour discussion se fondent sur les grands principes directeurs qui suivent :

- protection des prestations dans un cadre économique et financier adéquat;
- création d'un cadre administratif efficace;
- préparation de normes équitables, claires et modernes et qui, en matière de régimes professionnels, reflètent les besoins d'une société et d'une économie en mutation;
- délai suffisant pour permettre aux promoteurs des régimes, aux participants et aux agents négociateurs de s'adapter aux exigences de la réforme;
- raffermissement et expansion du système volontaire des régimes professionnels.

In adopting these principles, the government is attempting to balance the often competing objectives of enhancing pension benefits for existing plan members and ensuring appropriate funding while retaining administrative flexibility for plan sponsors within a voluntary employment pension framework.

Expansion of Pension Coverage

Ontario is committed to expanding the voluntary employment pension system, in recognition that employer-sponsored pension plans provide an important source of retirement income for Ontario employees and their families. This commitment is reflected in the new eligibility and vesting rights under the Pension Benefits Act, 1987 which will improve coverage for part-time and mobile workers over the next few years. However, because fewer than half of Ontario workers participate in employment pension plans at the present time, the expansion of coverage remains a key priority of pension reform.

Within a voluntary framework, there will be certain factors that restrict pension coverage expansion, including wage levels and employers' financial stability. There may be other factors, however, such as levels of awareness and understanding of pensions and complex administrative requirements that are currently inhibiting participation in employment pension plans. The government will be undertaking detailed market research and consultation to identify barriers that may be discouraging voluntary pension plan expansion and to identify those groups who are not currently covered by employment pensions. Consultations will be held with employers, employees, and other interested groups to identify opportunities and to develop appropriate measures to increase participation in employment pension plans in Ontario.

Policy Proposals for Legislation

INFLATION PROTECTION

After consultation and careful deliberation, the Ontario government is releasing for discussion inflation protection proposals based on the recommendations of the Friedland Task Force on Inflation Protection for Employment Pension Plans. The proposed approach to indexation reflects a commitment to protect Ontario's retirees from the future loss of purchasing power during their retirement years. The specific implementation formula and procedures represent a balanced approach to the sharing of risks and costs between employers and employees.

The key features of the indexation proposals are as follows:

En adoptant ces principes, le gouvernement essaie également d'atteindre un équilibre entre deux objectifs souvent contradictoires, à savoir enrichir les prestations de retraite des participants actuels et offrir aux promoteurs suffisamment de souplesse au niveau de l'administration et du provisionnement, dans un cadre de régimes professionnels volontaires.

Élargissement de l'adhésion aux régimes

L'Ontario veut élargir le système volontaire des régimes professionnels, car les régimes de retraite de l'employeur sont une source importante de revenus de retraite pour les employés et les familles de l'Ontario. Cet engagement se reflète dans les nouvelles dispositions de la Loi de 1987 sur les régimes de retraite relatives à l'admissibilité et aux droits d'acquisition, qui augmenteront le nombre d'adhésions chez les travailleurs mobiles et à temps partiel, au cours des quelques prochaines années. Cependant, puisque moins de la moitié des travailleurs ontariens participent actuellement à des régimes professionnels, l'expansion des adhésions demeure une des grandes priorités de la réforme.

Dans un système volontaire, il demeurera certains facteurs restreignant l'expansion des adhésions aux régimes, notamment les niveaux de rémunération et la stabilité financière des employeurs. Cependant, il existe peut-être d'autres facteurs qui inhibent actuellement la participation aux régimes professionnels, par exemple les niveaux de sensibilisation et de compréhension des régimes de retraite et la complexité des exigences administratives. Le gouvernement lancera un mécanisme approfondi de recherche et de consultation du marché, afin d'identifier les groupes cibles non encore couverts et les obstacles pouvant jouer contre l'expansion des régimes volontaires. Le gouvernement consultera les employeurs, les employés et les autres groupes intéressés, afin de dégager les possibilités et de mettre au point des mesures propres à favoriser la participation aux régimes professionnels en Ontario.

Orientations législatives

PROTECTION CONTRE L'INFLATION

Après avoir consulté et mûrement réfléchi, le gouvernement de l'Ontario publie, à des fins de discussion, des propositions de protection-inflation fondées sur les recommandations du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation (Groupe d'étude Friedland). La stratégie d'indexation envisagée rend compte d'une volonté de protéger les futurs retraités de l'Ontario d'une perte de pouvoir d'achat pendant leur retraite. La formule et les modalités précises de mise en application représentent une méthode équilibrée de partage des risques et des coûts entre les employeurs et les employés.

Voici les grandes caractéristiques des propositions d'indexation :

- Indexation will be required on a yearly basis at the level of (75% of CPI) minus a deductible of 1%, for all benefits earned in defined benefit plans (covering more than 4 of every 5 pension plan members in Ontario) after the effective date of the legislation. This formula ensures that increases in inflation beyond a minimum deductible are shared between pension plan sponsors and plan members on a 75% to 25% basis;

- The maximum level of inflation which will be required to be taken into account in any one year will be 8%, with any excess carried forward to future years. By applying the indexing formula with the 8% maximum, mandatory pension increases in a single year to compensate for inflation would be capped at 5%. The carry-forward of inflation over 8% ensures that further protection is realized by members over time;

- Members of defined contribution pension plans and multi-employer pension plans will be required to be given the choice of an indexed pension at the time of retirement or termination. Each retiree will be able to choose to receive either an indexed annuity or a fixed annuity, where the two have the same commuted value;

- As a minimum, pension benefits up to 60% of the Canada Pension Plan's Year's Maximum Pensionable Earnings ($27,700 in 1989) will be required to be indexed. CPP and OAS benefits, which are fully indexed to inflation, compensate for the remaining 40%;

- Indexing of pensions of employees who terminate prior to retirement (deferred pensions) will be required on a prospective basis at the level of (75% of CPI) -1%. It would be undesirable to restrict the real benefit of inflation protection solely to long-service employees of single employers;

- Adjustments for inflation protection will only be required to begin at the later of actual retirement or within 5 years prior to the pension plans "normal retirement age". In most cases this will mean that indexing can begin at age 60, which is also when Canada Pension Plan payments can begin;

- The effective date of indexing legislation will be set far enough in the future to permit indexing costs to be taken into account by plan sponsors and in collective bargaining;

- Retroactive inflation protection of benefits accrued by retirees and current plan members prior to the effective date of the legislation will be encouraged on a voluntary basis through a number of cost-containing inducements:

  - a fifteen year phase-in of prospective indexation, starting at the formula of (75% of CPI) - 2½;

  - a five-year phase-in of indexation for the past service of current worker and the pensions of existing retirees (to protect them against <u>future</u> inflation) rising from (75% of CPI) - 2½ to (75% of CPI) - 2%;

- il faudra indexer annuellement à 75 % de l'IPC moins une franchise de 1 % toutes les prestations acquises dans les régimes à prestations déterminées (qui regroupent plus de quatre sur cinq des participants de la province), après l'entrée en vigueur de la loi. En vertu de cette formule, les hausses de l'inflation dépassant la franchise minimale sont partagées entre les promoteurs et les participants à raison de 75 % et de 25 % respectivement;

- le taux maximal d'inflation à retenir, quelle que soit l'année, sera de 8 %, et tout excédent sera reporté sur les années futures. En imposant à la formule d'indexation un maximum de 8 %, l'indexation obligatoire des rentes, pour une année donnée, serait plafonnée à 5 %. Le report de ce qui dépasse 8 % d'inflation fait en sorte que, avec le temps, les participants bénéficieront d'une protection supplémentaire;

- les participants des régimes à cotisations déterminées et des régimes multi-employeurs devront avoir la possibilité de choisir une rente indexée, au départ à la retraite ou à la cessation d'emploi. Chaque retraité doit choisir une rente indexée ou une rente fixe, si les deux ont la même valeur actualisée;

- au minimum, il faudra indexer les prestations de retraite jusqu'à 60 % du maximum des gains annuels ouvrant droit à pension (27 700 $ en 1989) du Régime de pensions du Canada. Les prestations du RPC et du PSV sont entièrement indexées à l'inflation et compensent les 40 % qui restent;

- il faudra indexer prospectivement à (75 % de l'IPC) - 1 % les rentes des employés quittant leur emploi avant la retraite (rentes différées). Il serait souhaitable de restreindre l'avantage réel de la protection-inflation aux employés à longs états de service, dans le cas d'employeurs uniques;

- les redressements de protection contre l'inflation ne seront obligatoires qu'au départ à la retraite ou dans les cinq ans suivant l'âge normal de la retraite prévu au régime, à l'éventualité la plus tardive. Dans la plupart des cas, cela signifie que l'indexation pourra commencer à 60 ans, âge où peuvent aussi être versées les prestations du Régime de pensions du Canada;

- la date d'entrée en vigueur des mesures législatives d'indexation sera suffisamment lointaine pour permettre aux promoteurs, ainsi qu'aux parties à la négociation collective, de tenir compte des coûts d'indexation;

- la protection-inflation rétroactive des prestations acquises par les retraités et les participants actuels avant la date d'entrée en vigueur de la loi sera encouragée, sur une base volontaire, par un certain nombre de mesures incitatives de compression des coûts :

  - une période d'introduction de quinze ans pour l'indexation prospective, au départ selon la formule de (75 % de l'IPC) - 2,5 %;

  - une période de cinq ans pour l'indexation du service passé des travailleurs actuels et des rentes des retraités (pour les protéger de l'inflation future) passant de (75 % de l'IPC) - 2,5 % à (75 % de l'IPC) - 2 %;

- a cap on the maximum level of inflation required to be taken into account in any one year during the phase-in of 6% rather than 8%;

- an overall cap on retroactive costs of 1% per annum of payroll;

- the postponement of the commencement of adjustments for inflation protection to normal retirement age, rather than 5 years prior to retirement;

- A separate major inducement for retroactive indexation will be the allowance for sharing pension surplus between plan sponsors and current plan members and pensioners:

  - In ongoing plans, one dollar of pre-January 1, 1987 surplus can be withdrawn for each dollar allocated to funding formal retroactivity, to the level of (75% of CPI) - 2%;

  - In plan wind-ups, sponsors will not be entitled to withdraw surplus until each member has been provided with the greater of formal retroactivity to the level of (75% of CPI) - 1% or the benefit of the rule that employers must pay at least 50% of the value of an employee's pension;

- Finally, plan sponsors will continue to be permitted to take contribution holidays, subject to existing Ontario and federal funding requirements.

FAMILY LAW REFORMS

The Family Law Act, 1986 recognized for the first time in Ontario that pensions were family property and could be divided along with other family assets in cases of marriage breakdown. As a result, the Pension Benefits Act, 1987 established certain rules to allow for the sharing of pensions between separating or divorcing spouses. However, experience with the treatment of pension benefits when marital breakdown occurs has demonstrated the need to provide for greater flexibility in the splitting of pension benefits between separating spouses.

The Pension Benefits Act, 1987 allows pension benefits to be divided between separating spouses only when money becomes payable to the plan members. In practice, this means that pensions cannot be shared until the member spouse ceases employment, retires, or dies or unless the pension plan is wound up. This usually creates the need for an arrangement whereby a continuing economic relationship is required between separating spouses, resulting in uncertainty for the non-member spouse. In addition, the Pension Benefits Act, 1987 currently limits the amount that may be transferred to the non-member spouse to 50% of the member spouse's benefits. In some separation settlements, however, the parties may wish to split the pension benefits to provide more than 50% to the non-member spouse.

- un plafonnement du niveau maximal d'inflation à prendre en compte, quelle que soit l'année de la période d'introduction, et qui sera de 6 %, plutôt que de 8 %;

- un plafonnement global des coûts rétroactifs à 1 % de la masse salariale;

- le report du début de l'indexation à l'âge normal de la retraite, plutôt qu'à cinq ans avant la retraite;

- une des grandes mesures incitatives d'indexation rétroactive sera l'autorisation de partager l'excédent des rentes entre les promoteurs, les participants actuels et les retraités :

  - dans les régimes exploités, on pourra retirer un dollar de l'excédent antérieur au 1er janvier 1989 pour chaque dollar affecté au provisionnement de la rétroactivité officielle, à raison de (75 % de l'IPC) - 2 %;

  - en cas de liquidation du régime, le promoteur ne pourra retirer l'excédent que lorsque chaque participant aura bénéficié de l'indexation rétroactive officielle à (75 % de l'IPC) - 1 % ou de la règle de la quote-part de l'employeur, selon laquelle ce dernier doit payer au moins la moitié de la valeur de la rente de l'employé, à l'éventualité la meilleure;

- enfin, les promoteurs conserveront le droit aux congés de cotisation, sous réserve des exigences actuelles de provisionnement de la province et du fédéral.

RÉFORME DU DROIT DE LA FAMILLE

Par l'adoption de la Loi de 1986 sur le droit de la famille, l'Ontario reconnaissait pour la première fois que les rentes de retraite sont un bien familial et qu'elles pouvaient, en cas de rupture du mariage, être partagées comme les autres biens de la famille. Ainsi, la Loi de 1987 sur les régimes de retraite établissait certaines règles permettant le partage des rentes entre les époux qui se séparent ou divorcent. Cependant, l'expérience acquise dans le traitement des prestations de retraite en cas de rupture du mariage a fait ressortir la nécessité d'une plus grande souplesse dans le partage des prestations entre les conjoints qui se séparent.

La Loi de 1987 sur les régimes de retraite n'autorise le partage des prestations de retraite entre les époux qui se séparent qu'au moment où la rente doit être servie au participant. Dans la pratique, cela signifie que la rente ne peut être partagée que lorsque le conjoint participant quitte son emploi, prend sa retraite ou meurt, ou encore, que le régime est liquidé. Cela aboutit habituellement à la création d'un arrangement où il doit persister une relation économique entre les conjoints qui se séparent, d'où une certaine incertitude pour le conjoint non cotisant. En outre, la loi actuelle limite le montant attribuable au conjoint non cotisant à 50 % des prestations du conjoint cotisant. Cependant, dans certains règlements de partage, les parties peuvent vouloir diviser les prestations de retraite de façon à accorder plus de 50 % au conjoint non cotisant.

To provide for greater security and certainty for the non-member spouse, and greater freedom to negotiate family property settlements, the government proposes the following changes to the Pension Benefits Act, 1987:

- allowing for the splitting of an individual's pension entitlement at the time of separation or divorce;

- permitting the pension plan member to share any portion of his or her pension benefits with a spouse in a family property settlement.

IMPROVED ADMINISTRATION AND ENHANCED ENFORCEMENT AND PROTECTION

The Pension Benefits Act, 1987 reforms provided a number of significant benefit improvements for plan members and redressed certain inequities in pension plans that had existed for some time. Experience to date has indicated that some further reforms are warranted and, in some cases, clarification is needed to ensure pension plans are administered in a way which is fair and flexible for both employees and employers.

For this purpose, the government is proposing a series of legislative reforms to enhance protection for members' benefits and rights, increase flexibility for plan sponsors in providing various pension benefits and administering different plan designs, and improve the efficiency and effectiveness of the pension regulatory agency, the Pension Commission of Ontario. The key reforms proposed for this purpose can be highlighted as follows:

- ensuring that employees' eligibility for membership in a pension plan is not detrimentally affected by the sale of a business;

- ensuring that employees who move within different pension plans of the same employer will not have an increased qualification period for vesting;

- clarifying the scope of pre-retirement death benefits under the Act to ensure the beneficiary receives the plan contributions made by the member prior to January 1, 1987, plus interest;

- requiring spousal consent for the waiver of any post-retirement death benefits;

- allowing an exception to the prohibition of plan amendments which reduce benefits retroactively, where the consent of the Superintendent of Pensions, the plan sponsor and members of their bargaining agent is given;

- allowing regulation of plan conversions to ensure they are carried out in an appropriate manner without causing unfairness to plan members or sponsors;

Afin d'offrir plus de sécurité et de certitude au conjoint non cotisant et une plus grande latitude dans la négociation de règlements de partage des biens de la famille, le gouvernement compte apporter à la Loi de 1987 sur les régimes de retraite les modifications suivantes :

- autoriser le partage des droits de rente d'une personne, à la séparation ou au divorce; et

- autoriser le participant au régime à partager ses prestations de retraite avec son conjoint, dans la répartition des biens familiaux.

AMÉLIORATION DE L'ADMINISTRATION, DE LA MISE EN APPLICATION ET DE LA PROTECTION

Les réformes de la Loi de 1987 sur les régimes de retraite prévoyaient un certain nombre d'améliorations appréciables des prestations des participants et corrigeaient les injustices constatées dans certains régimes. L'expérience acquise à ce jour montre que d'autres réformes sont justifiées et que, dans certains cas, il faut apporter des éclaircissements pour garantir équité et souplesse tant aux employeurs qu'aux employés.

À cette fin, le gouvernement préconise une série de réformes qui visent à mieux protéger les prestations et les droits des participants, à donner plus de souplesse aux promoteurs dans la mise en place des diverses prestations de retraite et dans l'administration de leurs types de régimes, ainsi qu'à augmenter l'efficacité et l'efficience de l'organisme responsable de la réglementation de régimes de retraite, à savoir la Commission des régimes de retraite de l'Ontario. Voici les points saillants des principales réformes envisagées :

- faire en sorte que l'admissibilité à participer à un régime de retraite ne soit pas contrée par la vente d'une entreprise;

- veiller à ce que la période d'admissibilité, en matière d'acquisition, ne soit pas prolongée, si l'employé passe d'un régime à un autre, différent mais chez le même employeur;

- élargir la portée des dispositions de la loi qui touchent les prestations de décès avant la retraite, pour que le bénéficiaire reçoive les cotisations faites au régime par le participant avant le 1er janvier 1987, en plus des intérêts;

- exiger le consentement du conjoint à la renonciation à toute prestation de décès avant la retraite;

- autoriser une exception à l'interdiction de modification des régimes, si cela réduit rétroactivement les prestations, lorsqu'il y a consentement du Surintendant des régimes de retraite, du promoteur et des participants ou de leur agent négociateur;

- autoriser la réglementation des conversions de régimes, pour qu'elles s'effectuent dans les formes, sans nuire aux participants ou aux promoteurs;

- faire en sorte qu'à la vente de l'entreprise, si les charges du régime sont cédées à un nouveau régime, l'actif doive aussi l'être;

- providing that on the sale of business where pension plan liabilities are transferred to a new plan, plan assets must also be transferred;

- extending access to plan documents by interested parties;

- allowing for the designation of a single plan administrator in cases of related corporate employers whose employees all belong to the same pension plan;

- allowing employers an extra 3 months to apply for refunds of overpayments;

- increasing the level at which a plan administrator can require the cashing out of small pensions to 4% of YMPE;

- defining and treating multi-unit pension plans (MUPPs) separately from multi-employer pension plans;

- clarifying the exercise of powers to indicate that the Superintendent has exclusive order-making jurisdiction while the Pension Commission exercises an appeal function;

- allowing the Pension Commission to levy fees for hearings and to make awards of costs where warranted;

- permitting the Pension Commission to issue interpretation bulletins and hold reference hearings.

SOLVENCY VALUATION

The regulations to the Pension Benefits Act, 1987 strengthened the funding standards for pension plans in Ontario by requiring accelerated funding for all benefits that would be payable if the plan were to wind up. This new "solvency valuation" requirement is desirable for the purpose of funding protection but has created a number of problems for certain pension plans, and in some cases, has restricted the ability of employers to continue or to improve certain favourable benefits.

To address this situation, the government proposes to maintain the basic requirement of solvency valuation but to introduce a number of legislative reforms which would improve short-term funding flexibility for certain supplementary benefits, while ensuring an appropriate level of funding for all basic statutory benefits. These changes would be accompanied by increased reporting requirements on funding standards to ensure adequate monitoring of compliance with statutory funding requirements.

- faire en sorte que les parties intéressées aient davantage accès aux documents du régime;
- autoriser la désignation d'un administrateur unique, dans les grands régimes d'entreprises;
- offrir aux employeurs trois mois supplémentaires pour demander le remboursement du trop-payé;
- relever à 4 % du MGAP le niveau auquel l'administrateur du régime peut exiger le retrait des petites rentes;
- définir et traiter distinctement les régimes multi-employeurs et les régimes de retraite multi-syndicaux;
- préciser l'exercice des pouvoirs et stipuler que le Surintendant a compétence exclusive, en ce qui a trait aux ordres, tandis que la Commission des régimes de retraite agit comme palier d'appel;
- autoriser la Commission des régimes de retraite à percevoir des frais d'audience et à adjuger les coûts, si cela est justifié;
- autoriser la Commission des régimes de retraite à publier des bulletins d'interprétation et à tenir des audiences de consultation.

ÉVALUATION DE SOLVABILITÉ

Le règlement afférent à la Loi de 1987 sur les régimes de retraite raffermissait les normes de provisionnement des régimes de retraite ontariens en exigeant une capitalisation accélérée de toutes les prestations qu'il faudrait servir si le régime était liquidé. Cette nouvelle exigence d'«évaluation» de solvabilité, souhaitable pour capitaliser et protéger les prestations, a occasionné nombre de problèmes à certains régimes et, dans quelques cas, a réduit la capacité des employeurs de maintenir ou d'améliorer certaines prestations généreuses.

Pour corriger la situation, le gouvernement projette de maintenir la règle de l'évaluation de solvabilité, mais d'introduire un certain nombre de réformes qui, à court terme, donneraient plus de souplesse à l'égard de certaines prestations supplémentaires, tout en garantissant un niveau approprié de capitalisation pour protéger toutes les prestations statutaires de base. Ces changements s'accompagneraient d'exigences de divulgation accrues, relativement aux normes de provisionnement, pour garantir un contrôle adéquat du respect des exigences statutaires de capitalisation.

The government is proposing the following legislative reforms to solvency valuation:

- providing that pension plan members be assumed to have employer consent for supplementary benefits provided in addition to regular pensions on plan wind-up only if they have met all other eligibility requirements;

- excluding enhanced plant closure benefits, those that are in excess of statutory provisions, from solvency valuation requirements;

- extending the initial funding period for solvency deficiencies created by the assumed employer consent provision for supplementary benefits on wind-up from 5 to 15 years for benefits effective prior to the proclamation of the Pension Benefits Act, 1987;

- allowing solvency deficiencies which arise from future benefit increases agreed upon prior to January 1, 1988, to be funded over 15 years;

- clarifying regulations to confirm that pre-payments made by plan sponsors in excess of minimum funding requirements may be used as an offset against future funding obligations for solvency deficiency payments, special payments and going concern payments;

- requiring annual solvency valuation reports for pension plans with solvency deficiencies over $1 million or funded ratios less than 80%.

Pension Benefits Guarantee Fund

In conjunction with proposed reforms to improve the security and integrity of pension benefits, the government is reviewing the role of the Pension Benefits Guarantee Fund. The Fund provides supplementary protection for defined benefit pension plans in the event of a plan wind-up where there are insufficient assets to pay for pension benefits, for example as a result of plan sponsor bankruptcy. Although the Fund is financed through assessments on the province's defined benefit plans, provision is made for a government loan to the Fund in the event of a shortfall. The Pension Benefits Guarantee Fund is currently in a significant deficit position due to the failure of Massey Combines Corporation.

Based on experience to date, it is clear that without major restructuring, the Pension Benefits Guarantee Fund represents an inappropriate potential risk to Ontario taxpayers, the majority of whom are not members of defined benefit pension plans. At this time, the government is considering the possibility of restructuring the Guarantee Fund or replacing it with more stringent funding rules and other benefit safeguards.

Le gouvernement envisage certaines réformes législatives à l'évaluation de solvabilité, à savoir :

- stipuler que les participants ne sont réputés avoir obtenu le consentement de l'employeur aux prestations supplémentaires offertes en plus des rentes normales, à la liquidation d'un régime, que s'ils répondent à toutes les autres conditions d'admissibilité;

- exclure des exigences d'évaluation de solvabilité les prestations enrichies de fermeture d'usine dépassant les dispositions statutaires;

- prolonger en portant de 5 à 15 ans, à l'égard des prestations en vigueur avant la proclamation de la Loi de 1987 sur les régimes de retraite, la période initiale de provisionnement des déficits de solvabilité créés par le consentement présumé de l'employeur aux prestations supplémentaires, à la liquidation d'un régime;

- autoriser le provisionnement sur 15 ans des déficits de solvabilité découlant des hausses des prestations futures convenues avant le 1er janvier 1988;

- préciser la réglementation et confirmer que les versements préalables effectués par les promoteurs au-delà des exigences minimales de provisionnement peuvent servir à compenser les obligations futures de capitalisation à l'égard des paiements du déficit de solvabilité, ainsi que des paiements spéciaux et d'exploitation;

- exiger un rapport annuel d'évaluation de solvabilité des régimes où le déficit de solvabilité dépasse un million de dollars ou le rapport de provisionnement est inférieur à 80 %.

Fonds de garantie des prestations de retraite

En même temps que les autres réformes projetées pour augmenter la sécurité et l'intégrité des prestations, le gouvernement étudie le rôle du Fonds de garantie des prestations de retraite. Le Fonds donne une protection supplémentaire aux régimes à prestations déterminées, au cas où il y aurait liquidation du régime sans qu'il y ait suffisamment d'actif pour servir les prestations de retraite, par exemple si le promoteur fait faillite. Bien que le Fonds soit provisionné par les cotisations des régimes à prestations déterminées de la province, il existe une disposition prévoyant un prêt gouvernemental au FGPR, en cas d'insuffisance de la caisse du programme. Le Fonds est actuellement en position déficitaire grave, en raison de l'échec de la Massey Combines Corporation.

D'après l'expérience acquise jusqu'à maintenant, il appert que, sans restructuration majeure, le Fonds de garantie des prestations de retraite est, pour les contribuables ontariens, un risque potentiel inopportun, car la majorité des Ontariens n'ont pas de régime de retraite professionnel. Pour le moment, le gouvernement étudie la possibilité de restructurer le Fonds ou de le remplacer par des règles de financement plus strictes et d'autres mesures de protection des prestations.

If the Pension Benefits Guarantee Fund is maintained, it would be necessary to restructure both premium and payout levels to ensure that the Fund could operate on a self-funded basis. Coverage provided by the Fund could be reduced or targeted to specific groups such as current pensioners and older long-service workers. Premiums could also be increased or shared more equally among covered plans.

If the Pension Benefits Guarantee Fund is eliminated or phased out over time, it would be necessary to reduce the risk to pensioners and plan members associated with plan sponsor insolvency. This could be achieved through an extension of plan sponsor and plan member responsibility for pension liabilities, through higher funding and disclosure requirements and through the setting of appropriate priorities for pension benefits in the event of insufficient assets in a plan as a result of plan sponsor insolvency.

In addition to the options of restructuring or replacing the Pension Benefits Guarantee Fund, the government will be considering other possible measures to balance the protection of pensioners' and members' benefits with the cost to sponsors, members and taxpayers. Comment is invited from all interested groups on alternative approaches to protect pension benefits and on the issue of the future of the Pension Benefits Guarantee Fund.

Si le Fonds de garantie des prestations de retraite demeure, il faudra restructurer les primes et les niveaux des déboursés, pour que le Fonds puisse s'autofinancer. La protection offerte pourrait être ramenée à un niveau moins élevé ou ciblée sur des groupes précis, par exemple les retraités actuels et les travailleurs à longs états de service. En outre, il serait possible de relever les primes ou de les partager plus également entre les régimes protégés.

Si le Fonds de garantie des régimes de retraite est éliminé, même progressivement, il faudra veiller à réduire le risque que courent les retraités et les participants en cas d'insolvabilité du promoteur. Il serait possible d'y parvenir en élargissant les responsabilités des promoteurs et des participants à l'égard des charges de rentes, ou en relevant les exigences de provisionnement et la divulgation et en établissant des priorités adéquates, à l'égard des prestations de retraite, s'il y a insuffisance de l'actif du régime par suite de l'insolvabilité du promoteur.

En plus des possibilités de restructurer ou de remplacer le FGPR, le gouvernement étudiera d'autres solutions éventuelles pour parvenir à un juste équilibre entre la protection des prestations des retraités et des participants et les coûts des promoteurs, des participants et des contribuables. Nous désirons obtenir le point de vue de tous les groupes intéressés sur les diverses façons de protéger les prestations de retraite et sur la question de l'avenir du Fonds de garantie des prestations de retraite.

GLOSSARY OF PENSION TERMS

ANNUITY: In pension terminology, periodic payments (usually monthly) provided by the terms of a contract for the lifetime of an individual (the annuitant) or the individual and his or her designated beneficiary; may be fixed or varying amount, and may continue for a period after the annuitant's death.

CANADIAN PENSION PLAN (CPP): A national mandatory, earnings-related pension plan introduced together with the Quebec Pension Plan (QPP) in 1965, for all working Canadians between the ages of 18 and 70. It is financed on a partial pay-as-you-go basis.

COMMUTED VALUE: Amount of an immediate lump-sum payment estimated to be equal in value to a future series of payments.

CONSUMER PRICE INDEX (CPI): Measures the percentage change through time in the cost of purchasing a constant "basket" of goods and services representing the purchases by a particular population in a specified time period. The "basket" is of an unchanging or equivalent quantity and quality of goods and services. Changes in the cost of the basket are therefore due only to price movements. (Measured by Statistics Canada and reported in Consumer Price Index 62-001.)

DEFINED BENEFIT PLAN: A plan which defines the pension to be provided (based on service, earnings, etc.) but not the total contributions. If the plan is contributory, the rate of employee contributions may be specified, with the employer paying the balance of cost. To be distinguished from a defined contribution plan.

DEFINED CONTRIBUTION PLAN: A plan under which the amount of the employer contribution per plan member and, where applicable, the amount of the employee contribution is specified in advance and the benefits to be received by the retirees is calculated at the date of retirement based on the accumulated contributions and the investment yield of the accumulated contributions.

GOING CONCERN BASIS: Refers to the assumption used when making an actuarial valuation, that the pension plan will continue in operation indefinitely.

INDEXING: Provision for periodically adjusting a benefit amount (usually after retirement) according to a formula based on a recognized index of price or wage levels, e.g., the Consumer Price Index. To be distinguished from ad hoc adjustment.

PENSION: Generally, any regular periodic payment to a person who has retired from the service of an employer or has met certain age or other conditions for payments under a government pension program.

RETROACTIVE INFLATION PROTECTION: Applies to existing retirees, and current deferreds once they retire, as of the date of the legislation and to the level of pension payments they receive as of that date. It also applies to the past service credits of current retirees. This does not result in "catch-up" indexation for the inflation experienced prior to the effective date.

GLOSSAIRE DES RÉGIMES DE RETRAITE

AVANTAGES ACCESSOIRES: Prestations s'ajoutant aux prestations normales de retraite et aux prestations de survivant, par exemple les prestations de transition généreuses de retraite anticipée.

ÉVALUATION À LONG TERME: Évaluation ou calcul de l'actif et du passif d'un régime en supposant que ce dernier est permanent. On dit aussi «évaluation d'exploitation».

ÉVALUATION DE SOLVABILITÉ: Évaluation ou calcul de l'actif et du passif du régime en supposant qu'il y a eu cessation du régime à la date de l'évaluation. On parle aussi d'évaluation de liquidation ou de dissolution.

INDEXATION: Disposition prévoyant la revalorisation périodique du montant des prestations (habituellement après la retraite) selon une méthode ou formule fondée sur un indice reconnu des prix ou des salaires, par exemple l'Indice des prix à la consommation. Ne pas confondre avec les redressements ponctuels.

INDICE DES PRIX À LA CONSOMMATION (IPC): Pourcentage mesuré du changement dans le temps du coût d'achat d'un panier «constant» de biens et de services types dans une population donnée et une période déterminée. Le panier se compose des mêmes articles et services, par la quantité et la qualité (ou leurs équivalents). Les changements dans le coût du «panier» sont donc uniquement attribuables aux fluctuations de prix. (Établi par Statistique Canada et publié dans Indice des prix à la consommation, n° cat. 62-001)

LIQUIDATION (CESSATION D'UN RÉGIME): Arrêt d'un régime de retraite professionnel; elle peut être volontaire (cessation) ou involontaire (dissolution, par exemple en cas de faillite); procédure de liquidation réglementée par la Loi de 1987 sur les régimes de retraite.

MAXIMUM DES GAINS ANNUELS OUVRANT DROIT À PENSION (MGAP): Terme utilisé dans le Régime de pensions du Canada pour désigner les revenus d'emploi sur lesquels les cotisations et les prestations du RPC sont calculées. Le MGAP change chaque année selon une formule fondée sur les niveaux moyens des salaires.

PRESTATIONS ACQUISES: Prestations auxquelles un employé a droit aux termes d'un régime en fonction de l'âge atteint ou du nombre d'années de service; exige habituellement le blocage des cotisations à l'adhésion au régime et pour une certaine période.

PROTECTION RÉTROACTIVE CONTRE L'INFLATION: S'applique aux retraités actuels et aux titulaires de rentes différées, lorsqu'ils prennent leur retraite, à compter de l'entrée en vigueur de la loi, et au niveau des prestations qu'ils reçoivent à ce moment. S'applique également aux crédits de service passé des retraités actuels. Cette indexation n'offre pas de «rattrapage» à l'égard de l'inflation qui sévissait avant l'entrée en vigueur de la mesure législative.

RÉGIME À COTISATIONS DÉTERMINÉES: Régime où on précise d'avance le montant de la cotisation de l'employeur par participant et, s'il y a lieu, celle de l'employé; les prestations que recevront les retraités sont calculées à la date du départ à la retraite, d'après les cotisations accumulées et investies et leur rendement.

SOLVENCY VALUATION: A valuation or calculation of plan assets and liabilities based on the assumption that the plan terminated at the date of valuation. Also referred to as a 'wind-up' or 'termination' valuation.

SUPPLEMENTARY BENEFITS (ANCILLARY BENEFITS): Benefits in addition to regular pension benefits and survivor benefits such as bridging benefits and enriched early retirement benefits.

VESTED BENEFITS (VESTING): Benefits to which an employee is entitled under the plan as a result of age or service; usually requires locking-in of contributions as a result of membership in the plan for a specified period of time.

WIND-UP (PLAN TERMINATION): Discontinuance of an employment pension plan, voluntary or involuntary (e.g., as in bankruptcy); wind-up procedure regulated by Pension Benefits Act, 1987.

YEAR'S MAXIMUM PENSIONABLE EARNINGS (YMPE): Term used in the Canada Pension Plan, which refers to the earnings from employment on which CPP contributions and benefits are calculated. YMPE is changed each year according to a formula based on average wage levels.

RÉGIME À PRESTATIONS DÉTERMINÉES: Régime où on précise la rente à verser (en fonction du service, des gains, etc.) mais non les cotisations totales. Dans le cas d'un régime contributif, on peut préciser le taux de cotisation de l'employé, l'employeur versant le reste. Ne pas confondre avec Régime à cotisations déterminées.

RÉGIME DE PENSIONS DU CANADA (RPC): Régime de retraite national, obligatoire, fondé sur la rémunération, introduit en même temps que le Régime des rentes du Québec (RRQ), en 1965, et s'adressant à tous les travailleurs canadiens de 18 à 70 ans. Il est financé en partie par répartition.

RENTE: Dans le domaine des régimes de retraite, paiements périodiques (habituellement mensuels) versés à vie, en vertu d'un contrat, à une personne (le rentier) ou à cette personne et à ses bénéficiaires désignés; la rente peut être fixe ou variable et peut continuer à être versée pendant un certain après le décès du rentier.

RENTE DE RETRAITE: En règle générale, tout paiement périodique versé normalement à une personne qui était au service de l'employeur et a pris sa retraite ou répond à certaines conditions, notamment l'âge atteint, pour avoir droit aux prestations prévues dans un régime de retraite gouvernemental. (Voir aussi Rente)

VALEUR ACTUALISÉE: Montant d'un versement forfaitaire immédiat réputé d'égale valeur à une série de versements futurs. On dit parfois «valeur de rachat». (Voir aussi Valeur actuelle)

A draft for consultation
Document de consultation

Building on reform: Choices for tomorrow's pensions

March 1989

Perspectives des régimes de retraite: La réforme se poursuit

mars 1989

French translation by: Tessier Translations Corp., Ottawa
Traduction : Les Traductions Tessier, Ottawa
ISBN 0-7729-5313-9 (2v. set)
0-7729-5314-7
03/89 - 5.5M

Ontario
Ministry of Financial Institutions
Ministère des Institutions financières

THE CONSULTATION PROCESS

The Pension Benefits Act, 1987, brought many welcome reforms to employment pension plans. The new Act provided plan membership eligibility for part-time workers and earlier membership, vesting and locking-in of benefits for full-time workers. Minimum standards governing survivor benefits, early retirement and shared employer and employee responsibility for contributions were also introduced. As well, the Pension Benefits Act, 1987 made a commitment to mandatory inflation protection. These reforms were the result of extensive consultation between the government and plan members, pensioners, employers and pension professionals.

This document, Building on Reform: Choices for Tomorrow's Pensions, represents a continuation of the pension reform process, putting forward policy proposals on several interrelated pension issues and setting out legislative language reflecting these policy proposals. The issues include inflation protection, solvency valuation, family law issues, and other amendments to the current Act. The consultation draft also discusses the government's desire to expand employment pension coverage in Ontario and discusses concerns regarding the Pension Benefits Guarantee Fund.

While the government believes these proposals respect the legitimate needs both of plan members and plan sponsors, they are by no means intended to be the final stage in the development of legislative reform. The government recognizes that initiatives related to employer-sponsored pensions are of significance to the public at large as well as special interest groups. It is important to take the opportunity to gain the views and suggestions of those who will be directly affected. It is for this reason that this document is being widely circulated to encourage response to the proposed reforms.

Submissions

Those who wish to respond to the Consultation Draft are urged to do so before the 60-day established deadline as announced by the Minister. Please address comments in writing to:

The Honourable Murray Elston
Minister of Financial Institutions
Consultation Draft
Ministry of Financial Institutions
555 Yonge Street, 8th Floor
Toronto, Ontario
M7A 2H6

Additional copies of the Consultation Draft may be obtained from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario M7A 1N8. In Windsor, Ontario copies can be obtained from the Windsor Public Library, 850 Ouellette Avenue, Windsor, Ontario M9A 4M9 or in Ottawa - Access Ontario, 50 Rideau Street, Ottawa, Ontario, K1N 9J7.

LE MÉCANISME DE CONSULTATION

La Loi de 1987 sur les régimes de retraite a introduit dans les régimes de retraite professionnels nombre de réformes longtemps attendues, notamment : l'admissibilité pour les travailleurs à temps partiel et les participants de régimes antérieurs, ainsi que l'acquisition et l'immobilisation des prestations des travailleurs à plein temps. De plus, la loi marquait l'avènement de normes minimales régissant les prestations de survivant, la retraite anticipée et les responsabilités que partagent employeurs et employés à l'égard des cotisations. En outre, la Loi de 1987 sur les régimes de retraite manifestait un engagement envers la protection obligatoire contre l'inflation. Ces réformes étaient le fruit de vastes consultations entre le gouvernement et les participants, les retraités, les employeurs et les spécialistes des rentes.

Le présent document, intitulé Perspectives des régimes de retraite : la réforme se poursuit, s'inscrit dans un deuxième volet de ce processus de réforme des régimes. Nous y présentons les orientations envisagées, sur plusieurs aspects interreliés des rentes de retraite, ainsi que les formulations législatives traduisant ces orientations. Nous traiterons notamment de la protection contre l'inflation, de l'évaluation de solvabilité, des points relatifs au droit de la famille, ainsi que d'autres amendements à la loi actuelle. Dans ce document de consultation, nous verrons également pourquoi le gouvernement de l'Ontario souhaite élargir l'adhésion aux régimes professionnels dans la province et nous analyserons certains problèmes qui touchent le Fonds de garantie des prestations de retraite.

Le gouvernement est d'avis que ces propositions respectent les besoins légitimes des participants et des promoteurs des régimes, mais elles ne sauraient être le point final de l'élaboration des réformes législatives. Le gouvernement est conscient que les initiatives qui touchent les régimes de l'employeur ont de l'importance, tant pour la population en général que pour certains groupes de pression. Voilà pourquoi le document sera largement diffusé, afin de susciter suffisamment de réactions aux réformes envisagées.

Mémoires

Les personnes qui veulent présenter des mémoires sont priées de le faire dans le délai de 60 jours stipulé par le Ministre. Prière d'envoyer vos interventions écrites à l'adresse suivante :

L'honorable Murray Elston
Ministre des Institutions financières
Document de consultation
Ministère des Institutions financières
555, rue Yonge, 8e étage
Toronto (Ontario)
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Vous pouvez vous procurer d'autres exemplaires de Perspectives des régimes de retraite : la réforme se poursuit à la Librairie du gouvernement de l'Ontario, 880, rue Bay, Toronto (Ontario) M7A 1N8. À Windsor, les personnes intéressées peuvent en obtenir des exemplaires à la Bibliothèque publique de Windsor, 850, avenue Ouellette, Windsor (Ontario) M9A 4M9 ou, à Ottawa, au kiosque Accès Ontario, 50, rue Rideau, Ottawa (Ontario) K1N 9J7.

TABLE CONTENTS

Page

I. Executive Summary 4

II. The Evolving Pension Environment 20

III. Principles for Reform 34

IV. The Potential for Increased Pension Coverage 38

V. Proposals for Legislation 48

1. The Commitment to Inflation Protection 48
2. Family Law Reforms 80
3. Improved Administration and Enhanced Enforcement and Protection 92
4. Solvency Valuation 112

VI. Pension Benefits Guarantee Fund 124

VII. The Pension Benefits Amendment Act and Regulations Related to Solvency Valuation and Inflation Protection 138

APPENDICES:

A. Glossary of Pension Terms
B. Distribution of Pension Plan Members in Canada
C. Ontario Pension Plan Participation Trends
D. Erosion of Real Value of a Non-Indexed Pension
E. Terms of Reference of the Task Force on Inflation Protection of Employment Pension Plans
F. Recommendations of the Task Force on Inflation Protection
G. Pension Plans by Type and Plan Membership in Ontario

TABLE DES MATIÈRES

		Page
I.	Résumé de direction	5
II.	L'évolution du contexte des régimes de retraite	21
III.	Les grands principes de la réforme	35
IV.	Possibilités d'expansion des adhésions	39
V.	Propositions législatives	49
	1. Protection contre l'inflation	49
	2. Réforme du droit de la famille	81
	3. Amélioration de l'administration, de la mise en application et de la protection	93
	4. Évaluation de la solvabilité	113
VI.	Fonds de garantie des prestations de retraite	125
VII.	La loi modifiant la loi sur les régimes de retraite et les règlements relatifs à l'évaluation de solvabilité et à la protection contre l'inflation	139

ANNEXES

A. Glossaire des régimes de retraite
B. Distribution des participants des régimes de retraite au Canada
C. Statistique de participation aux régimes de retraite de l'Ontario
D. Érosion de la valeur réelle d'une rente non indexée
E. Mandat du Groupe d'étude de la protection des régimes de retraite de salaires contre l'inflation
F. Recommandations du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation
G. Régimes de retraite en Ontario, par type et nombre d'adhérents

I. EXECUTIVE SUMMARY

Ontario's Pension Leadership Role

For Ontario, pension reform is a dynamic process. The original Pension Benefits Act, which came into effect in 1965, was the first provincial legislation in Canada to regulate employment pension plans. This legislation set minimum standards governing the vesting, funding and investment of pension plan benefits and assets. The introduction of the Pension Benefits Act, 1987 signified another milestone in the development of Ontario's pension framework. Pension coverage was expanded through the provision of membership eligibility for part-time workers and earlier plan membership, vesting and locking-in of benefits for full-time workers. The new Act also improved minimum standards governing survivor benefits, early retirement, shared employer and employee responsibility for contributions, and established the principle of mandatory inflation protection.

The proposals outlined in this discussion paper and accompanying draft legislation build on the reform consensus developed through the Pension Benefits Act, 1987, the Report of the Task Force on Inflation Protection for Employment Pension Plans, and the consultation process to date. It is recognized that initiatives related to employer-sponsored pensions are of significance to the public at large as well as plan sponsors, employees and special interest groups. It is important to take the opportunity to gain the views and suggestions of those who will be directly affected.

Policy Principles for Pension Reform

The proposals put forward for discussion are based on the following key policy principles:

- the protection of pension benefits within a sound economic and responsible fiscal framework;
- the provision of an effective administrative framework;
- the provision of equitable, modern and clear employment pension standards which reflect the needs of a changing society and economy;
- the allowance of sufficient time to allow plan sponsors, plan members and bargaining agents to adjust to pension reform requirements;
- the fostering and expansion of the voluntary employment pension plan system.

In adopting these principles, the government is attempting to balance the often competing objectives of enhancing pension benefits for existing plan members and ensuring appropriate funding while retaining administrative flexibility for plan sponsors within a voluntary employment pension framework.

I. RÉSUMÉ DE DIRECTION

Leadership de l'Ontario en matière de régimes de retraite

En Ontario, la réforme des régimes de retraite est un mécanisme dynamique. L'ancienne Loi sur les régimes de retraite, qui est entrée en vigueur en 1965, était, au Canada, la première loi provinciale adoptée pour réglementer les régimes professionnels. Cette loi établissait des normes minimales régissant l'acquisition, le financement et l'investissement des prestations des régimes de retraite. La venue, en 1987, de la nouvelle Loi sur les régimes de retraite marquait un autre jalon dans le développement du système de retraite en Ontario. L'adhésion a été élargie grâce à une disposition autorisant l'accueil des travailleurs à temps partiel et des participants d'un régime antérieur, ainsi que par l'acquisition et le blocage des prestations. De plus, la nouvelle loi améliorait les normes minimales régissant les prestations de survivant, la retraite anticipée et le partage des responsabilités de cotisation des employeurs et des employés et s'engageait à rendre obligatoire la protection contre l'inflation.

Les propositions décrites au présent document et dans le projet législatif qui l'accompagne tirent parti du consensus qui s'est développé grâce à la Loi de 1987 sur les régimes de retraite, au Rapport du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation et aux résultats des consultations tenues jusqu'à maintenant. Il est évident que les initiatives qui touchent les régimes de retraite parrainés par les employeurs ont leur importance pour l'ensemble de la population, tout autant que pour les groupes de pression. Voilà pourquoi il faut saisir l'occasion d'obtenir le point de vue et les suggestions de ceux qui seront touchés directement.

Principes directeurs de la réforme

Les propositions mises de l'avant pour discussion se fondent sur les grands principes directeurs qui suivent :

- protection des prestations dans un cadre économique et financier adéquat;
- création d'un cadre administratif efficace;
- préparation de normes équitables, claires et modernes et qui, en matière de régimes professionnels, reflètent les besoins d'une société et d'une économie en mutation;
- délai suffisant pour permettre aux promoteurs des régimes, aux participants et aux agents négociateurs de s'adapter aux exigences de la réforme;
- raffermissement et expansion du système volontaire des régimes professionnels.

En adoptant ces principes, le gouvernement essaie également d'atteindre un équilibre entre deux objectifs souvent contradictoires, à savoir enrichir les prestations de retraite des participants actuels et offrir aux promoteurs suffisamment de souplesse au niveau de l'administration et du provisionnement, dans un cadre de régimes professionnels volontaires.

Expansion of Pension Coverage

Ontario is committed to expanding the voluntary employment pension system, in recognition that employer-sponsored pension plans provide an important source of retirement income for Ontario employees and their families. This commitment is reflected in the new eligibility and vesting rights under the Pension Benefits Act, 1987 which will improve coverage for part-time and mobile workers over the next few years. However, because fewer than half of Ontario workers participate in employment pension plans at the present time, the expansion of coverage remains a key priority of pension reform.

Within a voluntary framework, there will be certain factors that restrict pension coverage expansion, including wage levels and employers' financial stability. There may be other factors, however, such as levels of awareness and understanding of pensions and complex administrative requirements that are currently inhibiting participation in employment pension plans. The government will be undertaking detailed market research and consultation to identify barriers that may be discouraging voluntary pension plan expansion and to identify those groups who are not currently covered by employment pensions. Consultations will be held with employers, employees, and other interested groups to identify opportunities and to develop appropriate measures to increase participation in employment pension plans in Ontario.

Policy Proposals for Legislation

INFLATION PROTECTION

After consultation and careful deliberation, the Ontario government is releasing for discussion inflation protection proposals based on the recommendations of the Friedland Task Force on Inflation Protection for Employment Pension Plans. The proposed approach to indexation reflects a commitment to protect Ontario's retirees from the future loss of purchasing power during their retirement years. The specific implementation formula and procedures represent a balanced approach to the sharing of risks and costs between employers and employees.

The key features of the indexation proposals are as follows:

- Indexation will be required on a yearly basis at the level of (75% of CPI) minus a deductible of 1%, for all benefits earned in defined benefit plans (covering more than 4 of every 5 pension plan members in Ontario) after the effective date of the legislation. This formula ensures that increases in inflation beyond a minimum deductible are shared between pension plan sponsors and plan members on a 75% to 25% basis;

- The maximum level of inflation which will be required to be taken into account in any one year will be 8%, with any excess carried forward to future years. By applying the indexing formula with the 8% maximum, mandatory pension increases in a single year to compensate for inflation would be capped at 5%. The carry-forward of inflation over 8% ensures that further protection is realized by members over time;

Élargissement de l'adhésion aux régimes

L'Ontario veut élargir le système volontaire des régimes professionnels, car les régimes de retraite de l'employeur sont une source importante de revenus de retraite pour les employés et les familles de l'Ontario. Cet engagement se reflète dans les nouvelles dispositions de la Loi de 1987 sur les régimes de retraite relatives à l'admissibilité et aux droits d'acquisition, qui augmenteront le nombre d'adhésions chez les travailleurs mobiles et à temps partiel, au cours des quelques prochaines années. Cependant, puisque moins de la moitié des travailleurs ontariens participent actuellement à des régimes professionnels, l'expansion des adhésions demeure une des grandes priorités de la réforme.

Dans un système volontaire, il demeurera certains facteurs restreignant l'expansion des adhésions aux régimes, notamment les niveaux de rémunération et la stabilité financière des employeurs. Cependant, il existe peut-être d'autres facteurs qui inhibent actuellement la participation aux régimes professionnels, par exemple les niveaux de sensibilisation et de compréhension des régimes de retraite et la complexité des exigences administratives. Le gouvernement lancera un mécanisme approfondi de recherche et de consultation du marché, afin d'identifier les groupes cibles non encore couverts et les obstacles pouvant jouer contre l'expansion des régimes volontaires. Le gouvernement consultera les employeurs, les employés et les autres groupes intéressés, afin de dégager les possibilités et de mettre au point des mesures propres à favoriser la participation aux régimes professionnels en Ontario.

Orientations législatives

PROTECTION CONTRE L'INFLATION

Après avoir consulté et mûrement réfléchi, le gouvernement de l'Ontario publie, à des fins de discussion, des propositions de protection-inflation fondées sur les recommandations du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation (Groupe d'étude Friedland). La stratégie d'indexation envisagée rend compte d'une volonté de protéger les futurs retraités de l'Ontario d'une perte de pouvoir d'achat pendant leur retraite. La formule et les modalités précises de mise en application représentent une méthode équilibrée de partage des risques et des coûts entre les employeurs et les employés.

Voici les grandes caractéristiques des propositions d'indexation :

- il faudra indexer annuellement à 75 % de l'IPC moins une franchise de 1 % toutes les prestations acquises dans les régimes à prestations déterminées (qui regroupent plus de quatre sur cinq des participants de la province), après l'entrée en vigueur de la loi. En vertu de cette formule, les hausses de l'inflation dépassant la franchise minimale sont partagées entre les promoteurs et les participants à raison de 75 % et de 25 % respectivement;

- le taux maximal d'inflation à retenir, quelle que soit l'année, sera de 8 %, et tout excédent sera reporté sur les années futures. En imposant à la formule d'indexation un maximum de 8 %, l'indexation obligatoire des rentes, pour une année donnée, serait plafonnée à 5 %. Le report de ce qui dépasse 8 % d'inflation fait en sorte que, avec le temps, les participants bénéficieront d'une protection supplémentaire;

- Members of defined contribution pension plans and multi-employer pension plans will be required to be given the choice of an indexed pension at the time of retirement or termination. Each retiree will be able to choose to receive either an indexed annuity or a fixed annuity, where the two have the same commuted value;

- As a minimum, pension benefits up to 60% of the Canada Pension Plan's Year's Maximum Pensionable Earnings ($27,700 in 1989) will be required to be indexed. CPP and OAS benefits, which are fully indexed to inflation, compensate for the remaining 40%;

- Indexing of pensions of employees who terminate prior to retirement (deferred pensions) will be required on a prospective basis at the level of (75% of CPI) -1%. It would be undesirable to restrict the real benefit of inflation protection solely to long-service employees of single employers;

- Adjustments for inflation protection will only be required to begin at the later of actual retirement or within 5 years prior to the pension plans "normal retirement age". In most cases this will mean that indexing can begin at age 60, which is also when Canada Pension Plan payments can begin;

- The effective date of indexing legislation will be set far enough in the future to permit indexing costs to be taken into account by plan sponsors and in collective bargaining;

- Retroactive inflation protection of benefits accrued by retirees and current plan members prior to the effective date of the legislation will be encouraged on a voluntary basis through a number of cost-containing inducements:

    - a fifteen year phase-in of prospective indexation, starting at the formula of (75% of CPI) - 2½;

    - a five-year phase-in of indexation for the past service of current worker and the pensions of existing retirees (to protect them against <u>future</u> inflation) rising from (75% of CPI) - 2½ to (75% of CPI) - 2%;

    - a cap on the maximum level of inflation required to be taken into account in any one year during the phase-in of 6% rather than 8%;

    - an overall cap on retroactive costs of 1% per annum of payroll;

    - the postponement of the commencement of adjustments for inflation protection to normal retirement age, rather than 5 years prior to retirement;

- A separate major inducement for retroactive indexation will be the allowance for sharing pension surplus between plan sponsors and current plan members and pensioners:

- les participants des régimes à cotisations déterminées et des régimes multi-employeurs devront avoir la possibilité de choisir une rente indexée, au départ à la retraite ou à la cessation d'emploi. Chaque retraité doit choisir une rente indexée ou une rente fixe, si les deux ont la même valeur actualisée;

- au minimum, il faudra indexer les prestations de retraite jusqu'à 60 % du maximum des gains annuels ouvrant droit à pension (27 700 $ en 1989) du Régime de pensions du Canada. Les prestations du RPC et du PSV sont entièrement indexées à l'inflation et compensent les 40 % qui restent;

- il faudra indexer prospectivement à (75 % de l'IPC) - 1 % les rentes des employés quittant leur emploi avant la retraite (rentes différées). Il serait souhaitable de restreindre l'avantage réel de la protection-inflation aux employés à longs états de service, dans le cas d'employeurs uniques;

- les redressements de protection contre l'inflation ne seront obligatoires qu'au départ à la retraite ou dans les cinq ans suivant l'âge normal de la retraite prévu au régime, à l'éventualité la plus tardive. Dans la plupart des cas, cela signifie que l'indexation pourra commencer à 60 ans, âge où peuvent aussi être versées les prestations du Régime de pensions du Canada;

- la date d'entrée en vigueur des mesures législatives d'indexation sera suffisamment lointaine pour permettre aux promoteurs, ainsi qu'aux parties à la négociation collective, de tenir compte des coûts d'indexation;

- la protection-inflation rétroactive des prestations acquises par les retraités et les participants actuels avant la date d'entrée en vigueur de la loi sera encouragée, sur une base volontaire, par un certain nombre de mesures incitatives de compression des coûts :

    - une période d'introduction de quinze ans pour l'indexation prospective, au départ selon la formule de (75 % de l'IPC) - 2,5 %;

    - une période de cinq ans pour l'indexation du service passé des travailleurs actuels et des rentes des retraités (pour les protéger de l'inflation future) passant de (75 % de l'IPC) - 2,5 % à (75 % de l'IPC) - 2 %;

    - un plafonnement du niveau maximal d'inflation à prendre en compte, quelle que soit l'année de la période d'introduction, et qui sera de 6 %, plutôt que de 8 %;

    - un plafonnement global des coûts rétroactifs à 1 % de la masse salariale;

    - le report du début de l'indexation à l'âge normal de la retraite, plutôt qu'à cinq ans avant la retraite;

- une des grandes mesures incitatives d'indexation rétroactive sera l'autorisation de partager l'excédent des rentes entre les promoteurs, les participants actuels et les retraités :

- In ongoing plans, one dollar of pre-January 1, 1987 surplus can be withdrawn for each dollar allocated to funding formal retroactivity, to the level of (75% of CPI) - 2%;

- In plan wind-ups, sponsors will not be entitled to withdraw surplus until each member has been provided with the greater of formal retroactivity to the level of (75% of CPI) - 1% or the benefit of the rule that employers must pay at least 50% of the value of an employee's pension;

- Finally, plan sponsors will continue to be permitted to take contribution holidays, subject to existing Ontario and federal funding requirements.

FAMILY LAW REFORMS

The Family Law Act, 1986 recognized for the first time in Ontario that pensions were family property and could be divided along with other family assets in cases of marriage breakdown. As a result, the Pension Benefits Act, 1987 established certain rules to allow for the sharing of pensions between separating or divorcing spouses. However, experience with the treatment of pension benefits when marital breakdown occurs has demonstrated the need to provide for greater flexibility in the splitting of pension benefits between separating spouses.

The Pension Benefits Act, 1987 allows pension benefits to be divided between separating spouses only when money becomes payable to the plan members. In practice, this means that pensions cannot be shared until the member spouse ceases employment, retires, or dies or unless the pension plan is wound up. This usually creates the need for an arrangement whereby a continuing economic relationship is required between separating spouses, resulting in uncertainty for the non-member spouse. In addition, the Pension Benefits Act, 1987 currently limits the amount that may be transferred to the non-member spouse to 50% of the member spouse's benefits. In some separation settlements, however, the parties may wish to split the pension benefits to provide more than 50% to the non-member spouse.

To provide for greater security and certainty for the non-member spouse, and greater freedom to negotiate family property settlements, the government proposes the following changes to the Pension Benefits Act, 1987:

- allowing for the splitting of an individual's pension entitlement at the time of separation or divorce;

- permitting the pension plan member to share any portion of his or her pension benefits with a spouse in a family property settlement.

- dans les régimes exploités, on pourra retirer un dollar de l'excédent antérieur au 1er janvier 1989 pour chaque dollar affecté au provisionnement de la rétroactivité officielle, à raison de (75 % de l'IPC) - 2 %;

- en cas de liquidation du régime, le promoteur ne pourra retirer l'excédent que lorsque chaque participant aura bénéficié de l'indexation rétroactive officielle à (75 % de l'IPC) - 1 % ou de la règle de la quote-part de l'employeur, selon laquelle ce dernier doit payer au moins la moitié de la valeur de la rente de l'employé, à l'éventualité la meilleure;

- enfin, les promoteurs conserveront le droit aux congés de cotisation, sous réserve des exigences actuelles de provisionnement de la province et du fédéral.

RÉFORME DU DROIT DE LA FAMILLE

Par l'adoption de la Loi de 1986 sur le droit de la famille, l'Ontario reconnaissait pour la première fois que les rentes de retraite sont un bien familial et qu'elles pouvaient, en cas de rupture du mariage, être partagées comme les autres biens de la famille. Ainsi, la Loi de 1987 sur les régimes de retraite établissait certaines règles permettant le partage des rentes entre les époux qui se séparent ou divorcent. Cependant, l'expérience acquise dans le traitement des prestations de retraite en cas de rupture du mariage a fait ressortir la nécessité d'une plus grande souplesse dans le partage des prestations entre les conjoints qui se séparent.

La Loi de 1987 sur les régimes de retraite n'autorise le partage des prestations de retraite entre les époux qui se séparent qu'au moment où la rente doit être servie au participant. Dans la pratique, cela signifie que la rente ne peut être partagée que lorsque le conjoint participant quitte son emploi, prend sa retraite ou meurt, ou encore, que le régime est liquidé. Cela aboutit habituellement à la création d'un arrangement où il doit persister une relation économique entre les conjoints qui se séparent, d'où une certaine incertitude pour le conjoint non cotisant. En outre, la loi actuelle limite le montant attribuable au conjoint non cotisant à 50 % des prestations du conjoint cotisant. Cependant, dans certains règlements de partage, les parties peuvent vouloir diviser les prestations de retraite de façon à accorder plus de 50 % au conjoint non cotisant.

Afin d'offrir plus de sécurité et de certitude au conjoint non cotisant et une plus grande latitude dans la négociation de règlements de partage des biens de la famille, le gouvernement compte apporter à la Loi de 1987 sur les régimes de retraite les modifications suivantes :

- autoriser le partage des droits de rente d'une personne, à la séparation ou au divorce; et

- autoriser le participant au régime à partager ses prestations de retraite avec son conjoint, dans la répartition des biens familiaux.

IMPROVED ADMINISTRATION AND ENHANCED ENFORCEMENT AND PROTECTION

The Pension Benefits Act, 1987 reforms provided a number of significant benefit improvements for plan members and redressed certain inequities in pension plans that had existed for some time. Experience to date has indicated that some further reforms are warranted and, in some cases, clarification is needed to ensure pension plans are administered in a way which is fair and flexible for both employees and employers.

For this purpose, the government is proposing a series of legislative reforms to enhance protection for members' benefits and rights, increase flexibility for plan sponsors in providing various pension benefits and administering different plan designs, and improve the efficiency and effectiveness of the pension regulatory agency, the Pension Commission of Ontario. The key reforms proposed for this purpose can be highlighted as follows:

- ensuring that employees' eligibility for membership in a pension plan is not detrimentally affected by the sale of a business;
- ensuring that employees who move within different pension plans of the same employer will not have an increased qualification period for vesting;
- clarifying the scope of pre-retirement death benefits under the Act to ensure the beneficiary receives the plan contributions made by the member prior to January 1, 1987, plus interest;
- requiring spousal consent for the waiver of any post-retirement death benefits;
- allowing an exception to the prohibition of plan amendments which reduce benefits retroactively, where the consent of the Superintendent of Pensions, the plan sponsor and members of their bargaining agent is given;
- allowing regulation of plan conversions to ensure they are carried out in an appropriate manner without causing unfairness to plan members or sponsors;
- providing that on the sale of business where pension plan liabilities are transferred to a new plan, plan assets must also be transferred;
- extending access to plan documents by interested parties;
- allowing for the designation of a single plan administrator in cases of related corporate employers whose employees all belong to the same pension plan;

AMÉLIORATION DE L'ADMINISTRATION, DE LA MISE EN APPLICATION ET DE LA PROTECTION

Les réformes de la Loi de 1987 sur les régimes de retraite prévoyaient un certain nombre d'améliorations appréciables des prestations des participants et corrigeaient les injustices constatées dans certains régimes. L'expérience acquise à ce jour montre que d'autres réformes sont justifiées et que, dans certains cas, il faut apporter des éclaircissements pour garantir équité et souplesse tant aux employeurs qu'aux employés.

À cette fin, le gouvernement préconise une série de réformes qui visent à mieux protéger les prestations et les droits des participants, à donner plus de souplesse aux promoteurs dans la mise en place des diverses prestations de retraite et dans l'administration de leurs types de régimes, ainsi qu'à augmenter l'efficacité et l'efficience de l'organisme responsable de la réglementation de régimes de retraite, à savoir la Commission des régimes de retraite de l'Ontario. Voici les points saillants des principales réformes envisagées :

- faire en sorte que l'admissibilité à participer à un régime de retraite ne soit pas contrée par la vente d'une entreprise;

- veiller à ce que la période d'admissibilité, en matière d'acquisition, ne soit pas prolongée, si l'employé passe d'un régime à un autre, différent mais chez le même employeur;

- élargir la portée des dispositions de la loi qui touchent les prestations de décès avant la retraite, pour que le bénéficiaire reçoive les cotisations faites au régime par le participant avant le 1er janvier 1987, en plus des intérêts;

- exiger le consentement du conjoint à la renonciation à toute prestation de décès avant la retraite;

- autoriser une exception à l'interdiction de modification des régimes, si cela réduit rétroactivement les prestations, lorsqu'il y a consentement du Surintendant des régimes de retraite, du promoteur et des participants ou de leur agent négociateur;

- autoriser la réglementation des conversions de régimes, pour qu'elles s'effectuent dans les formes, sans nuire aux participants ou aux promoteurs;

- faire en sorte qu'à la vente de l'entreprise, si les charges du régime sont cédées à un nouveau régime, l'actif doive aussi l'être;

- faire en sorte que les parties intéressées aient davantage accès aux documents du régime;

- autoriser la désignation d'un administrateur unique, dans les grands régimes d'entreprises;

- allowing employers an extra 3 months to apply for refunds of overpayments;

- increasing the level at which a plan administrator can require the cashing out of small pensions to 4% of YMPE;

- defining and treating multi-unit pension plans (MUPPs) separately from multi-employer pension plans;

- clarifying the exercise of powers to indicate that the Superintendent has exclusive order-making jurisdiction while the Pension Commission exercises an appeal function;

- allowing the Pension Commission to levy fees for hearings and to make awards of costs where warranted;

- permitting the Pension Commission to issue interpretation bulletins and hold reference hearings.

SOLVENCY VALUATION

The regulations to the Pension Benefits Act, 1987 strengthened the funding standards for pension plans in Ontario by requiring accelerated funding for all benefits that would be payable if the plan were to wind up. This new "solvency valuation" requirement is desirable for the purpose of funding protection but has created a number of problems for certain pension plans, and in some cases, has restricted the ability of employers to continue or to improve certain favourable benefits.

To address this situation, the government proposes to maintain the basic requirement of solvency valuation but to introduce a number of legislative reforms which would improve short-term funding flexibility for certain supplementary benefits, while ensuring an appropriate level of funding for all basic statutory benefits. These changes would be accompanied by increased reporting requirements on funding standards to ensure adequate monitoring of compliance with statutory funding requirements.

The government is proposing the following legislative reforms to solvency valuation:

- providing that pension plan members be assumed to have employer consent for supplementary benefits provided in addition to regular pensions on plan wind-up only if they have met all other eligibility requirements;

- excluding enhanced plant closure benefits, those that are in excess of statutory provisions, from solvency valuation requirements;

- offrir aux employeurs trois mois supplémentaires pour demander le remboursement du trop-payé;

- relever à 4 % du MGAP le niveau auquel l'administrateur du régime peut exiger le retrait des petites rentes;

- définir et traiter distinctement les régimes multi-employeurs et les régimes de retraite multi-syndicaux;

- préciser l'exercice des pouvoirs et stipuler que le Surintendant a compétence exclusive, en ce qui a trait aux ordres, tandis que la Commission des régimes de retraite agit comme palier d'appel;

- autoriser la Commission des régimes de retraite à percevoir des frais d'audience et à adjuger les coûts, si cela est justifié;

- autoriser la Commission des régimes de retraite à publier des bulletins d'interprétation et à tenir des audiences de consultation.

ÉVALUATION DE SOLVABILITÉ

Le règlement afférent à la Loi de 1987 sur les régimes de retraite raffermissait les normes de provisionnement des régimes de retraite ontariens en exigeant une capitalisation accélérée de toutes les prestations qu'il faudrait servir si le régime était liquidé. Cette nouvelle exigence d'«évaluation» de solvabilité, souhaitable pour capitaliser et protéger les prestations, a occasionné nombre de problèmes à certains régimes et, dans quelques cas, a réduit la capacité des employeurs de maintenir ou d'améliorer certaines prestations généreuses.

Pour corriger la situation, le gouvernement projette de maintenir la règle de l'évaluation de solvabilité, mais d'introduire un certain nombre de réformes qui, à court terme, donneraient plus de souplesse à l'égard de certaines prestations supplémentaires, tout en garantissant un niveau approprié de capitalisation pour protéger toutes les prestations statutaires de base. Ces changements s'accompagneraient d'exigences de divulgation accrues, relativement aux normes de provisionnement, pour garantir un contrôle adéquat du respect des exigences statutaires de capitalisation.

Le gouvernement envisage certaines réformes législatives à l'évaluation de solvabilité, à savoir :

- stipuler que les participants ne sont réputés avoir obtenu le consentement de l'employeur aux prestations supplémentaires offertes en plus des rentes normales, à la liquidation d'un régime, que s'ils répondent à toutes les autres conditions d'admissibilité;

- exclure des exigences d'évaluation de solvabilité les prestations enrichies de fermeture d'usine dépassant les dispositions statutaires;

- extending the initial funding period for solvency deficiencies created by the assumed employer consent provision for supplementary benefits on wind-up from 5 to 15 years for benefits effective prior to the proclamation of the Pension Benefits Act, 1987;

- allowing solvency deficiencies which arise from future benefit increases agreed upon prior to January 1, 1988, to be funded over 15 years;

- clarifying regulations to confirm that pre-payments made by plan sponsors in excess of minimum funding requirements may be used as an offset against future funding obligations for solvency deficiency payments, special payments and going concern payments;

- requiring annual solvency valuation reports for pension plans with solvency deficiencies over $1 million or funded ratios less than 80%.

Pension Benefits Guarantee Fund

In conjunction with proposed reforms to improve the security and integrity of pension benefits, the government is reviewing the role of the Pension Benefits Guarantee Fund. The Fund provides supplementary protection for defined benefit pension plans in the event of a plan wind-up where there are insufficient assets to pay for pension benefits, for example as a result of plan sponsor bankruptcy. Although the Fund is financed through assessments on the province's defined benefit plans, provision is made for a government loan to the Fund in the event of a shortfall. The Pension Benefits Guarantee Fund is currently in a significant deficit position due to the failure of Massey Combines Corporation.

Based on experience to date, it is clear that without major restructuring, the Pension Benefits Guarantee Fund represents an inappropriate potential risk to Ontario taxpayers, the majority of whom are not members of defined benefit pension plans. At this time, the government is considering the possibility of restructuring the Guarantee Fund or replacing it with more stringent funding rules and other benefit safeguards.

If the Pension Benefits Guarantee Fund is maintained, it would be necessary to restructure both premium and payout levels to ensure that the Fund could operate on a self-funded basis. Coverage provided by the Fund could be reduced or targeted to specific groups such as current pensioners and older long-service workers. Premiums could also be increased or shared more equally among covered plans.

If the Pension Benefits Guarantee Fund is eliminated or phased out over time, it would be necessary to reduce the risk to pensioners and plan members associated with plan sponsor insolvency. This could be achieved through an extension of plan sponsor and plan member responsibility for pension liabilities, through higher funding and disclosure requirements and through the setting of appropriate priorities for pension benefits in the event of insufficient assets in a plan as a result of plan sponsor insolvency.

- prolonger en portant de 5 à 15 ans, à l'égard des prestations en vigueur avant la proclamation de la Loi de 1987 sur les régimes de retraite, la période initiale de provisionnement des déficits de solvabilité créés par le consentement présumé de l'employeur aux prestations supplémentaires, à la liquidation d'un régime;

- autoriser le provisionnement sur 15 ans des déficits de solvabilité découlant des hausses des prestations futures convenues avant le 1er janvier 1988;

- préciser la réglementation et confirmer que les versements préalables effectués par les promoteurs au-delà des exigences minimales de provisionnement peuvent servir à compenser les obligations futures de capitalisation à l'égard des paiements du déficit de solvabilité, ainsi que des paiements spéciaux et d'exploitation;

- exiger un rapport annuel d'évaluation de solvabilité des régimes où le déficit de solvabilité dépasse un million de dollars ou le rapport de provisionnement est inférieur à 80 %.

Fonds de garantie des prestations de retraite

En même temps que les autres réformes projetées pour augmenter la sécurité et l'intégrité des prestations, le gouvernement étudie le rôle du Fonds de garantie des prestations de retraite. Le Fonds donne une protection supplémentaire aux régimes à prestations déterminées, au cas où il y aurait liquidation du régime sans qu'il y ait suffisamment d'actif pour servir les prestations de retraite, par exemple si le promoteur fait faillite. Bien que le Fonds soit provisionné par les cotisations des régimes à prestations déterminées de la province, il existe une disposition prévoyant un prêt gouvernemental au FGPR, en cas d'insuffisance de la caisse du programme. Le Fonds est actuellement en position déficitaire grave, en raison de l'échec de la Massey Combines Corporation.

D'après l'expérience acquise jusqu'à maintenant, il appert que, sans restructuration majeure, le Fonds de garantie des prestations de retraite est, pour les contribuables ontariens, un risque potentiel inopportun, car la majorité des Ontariens n'ont pas de régime de retraite professionnel. Pour le moment, le gouvernement étudie la possibilité de restructurer le Fonds ou de le remplacer par des règles de financement plus strictes et d'autres mesures de protection des prestations.

Si le Fonds de garantie des prestations de retraite demeure, il faudra restructurer les primes et les niveaux des déboursés, pour que le Fonds puisse s'autofinancer. La protection offerte pourrait être ramenée à un niveau moins élevé ou ciblée sur des groupes précis, par exemple les retraités actuels et les travailleurs à longs états de service. En outre, il serait possible de relever les primes ou de les partager plus également entre les régimes protégés.

Si le Fonds de garantie des régimes de retraite est éliminé, même progressivement, il faudra veiller à réduire le risque que courent les retraités et les participants en cas d'insolvabilité du promoteur. Il serait possible d'y parvenir en élargissant les responsabilités des promoteurs et des participants à l'égard des charges de rentes, ou en relevant les exigences de provisionnement et la divulgation et en établissant des priorités adéquates, à l'égard des

In addition to the options of restructuring or replacing the Pension Benefits Guarantee Fund, the government will be considering other possible measures to balance the protection of pensioners' and members' benefits with the cost to sponsors, members and taxpayers. Comment is invited from all interested groups on alternative approaches to protect pension benefits and on the issue of the future of the Pension Benefits Guarantee Fund.

prestations de retraite, s'il y a insuffisance de l'actif du régime par suite de l'insolvabilité du promoteur.

En plus des possibilités de restructurer ou de remplacer le FGPR, le gouvernement étudiera d'autres solutions éventuelles pour parvenir à un juste équilibre entre la protection des prestations des retraités et des participants et les coûts des promoteurs, des participants et des contribuables. Nous désirons obtenir le point de vue de tous les groupes intéressés sur les diverses façons de protéger les prestations de retraite et sur la question de l'avenir du Fonds de garantie des prestations de retraite.

II. THE EVOLVING PENSION ENVIRONMENT

Ontario's Pension Leadership Role

Ontario has developed a strong employment pension system. For over a quarter of a century Ontario legislative initiatives have protected the interests of pension plan members. The original Pension Benefits Act was passed in 1963 and was the first provincial legislation in Canada to establish standards for employment pension plans. A revised version of this Act came into effect on January 1, 1965 and followed shortly afterwards by similar legislation in other provinces. The key elements of the original Pension Benefits Act were the establishment of rules governing the vesting and funding of pension benefits, and the investment of pension fund assets.

The passage of the Pension Benefits Act, 1987 signified another important milestone in the history of Ontario pension legislation. The new Act contained two major objectives:

- expansion of employment pension coverage; and
- improvement of benefit standards.

Specific provisions related to the expansion of coverage included:

- earlier plan membership eligibility;
- benefits vested and locked-in after two years;
- membership eligibility for part-time workers;
- enhanced pension portability by transfers to other pension plans or retirement savings vehicles.

Reforms related to the improvement of minimum standards included:

- the provision of survivor benefits;
- allowance for the division of benefits on marriage breakdown;
- early retirement entitlement at ten years prior to normal retirement date; and
- capping employee contributions at 50% of defined benefit plan costs.

In its commitment to pension reform, Ontario has consistently advocated support for mandatory indexation. Recognizing, however, that indexation is a complex and contentious issue, the Ontario government appointed the Task Force on Inflation Protection for Employment Pension Plans on December 9, 1986 to determine the most appropriate formula and procedures for mandatory indexation and to ensure that the direction given for implementation would be well-reasoned and effective. The Pension Benefits Act, 1987 contains a provision for mandatory inflation protection which, when it comes into force, will be the first legislated standard for inflation protection in North America. It is anticipated that the addition of the proposals set out in this paper regarding indexation will encourage other jurisdictions to follow Ontario's lead on this important issue.

II. L'ÉVOLUTION DU CONTEXTE DES RÉGIMES

Rôle de leadership de l'Ontario

L'Ontario s'est dotée d'un système très élaboré de régimes de retraite professionnels. Depuis plus d'un quart de siècle, les mesures législatives de la province protègent les intérêts des participants des régimes de retraite. Dans sa première version, la Loi sur les régimes de retraite était, au Canada, la première loi provinciale établissant des normes sur les régimes professionnels. Cette loi est entrée en vigueur le 1er janvier 1965, suivie peu de temps après par des mesures législatives analogues dans d'autres provinces. Les grands éléments de la loi initiale étaient la mise en place de règles régissant la dévolution et le provisionnement des régimes et l'investissement de l'actif des caisses de retraite.

L'adoption, en 1987, de la nouvelle Loi sur les régimes de retraite marquait un autre jalon important dans l'histoire de la législation ontarienne sur les régimes de retraite. La nouvelle loi avait deux grands objectifs :

- élargissement de l'adhésion aux régimes professionnels et
- amélioration des normes de prestations et de provisionnement.

Parmi les dispositions particulières liées à l'augmentation du nombre d'adhérents, mentionnons :

- admissibilité des participants d'un régime antérieur;
- acquisition et blocage des prestations après deux ans;
- admissibilité des travailleurs à temps partiel comme participants, et
- meilleure transférabilité des rentes vers d'autres régimes de retraite ou véhicules d'épargne-retraite.

Au chapitre des réformes d'amélioration des normes minimales, mentionnons :

- la création de prestations obligatoires de survivant;
- disposition relative à la répartition des prestations, en cas de rupture du mariage;
- droit à la retraite anticipée dix ans avant la date normale de départ à la retraite; et
- plafonnement des cotisations de l'employé à 50 % du coût des régimes à prestations déterminées, à la cessation ou à la retraite.

Dans son engagement envers la réforme des régimes de retraite, l'Ontario a constamment préconisé l'appui à l'indexation obligatoire. Sachant par contre que c'est là une question complexe et litigieuse, le gouvernement a créé, le 9 décembre 1986, le Groupe d'étude sur la protection des régimes de retraite des salaires contre l'inflation et lui a confié la tâche de trouver la formule et les modalités les plus appropriées d'indexation obligatoire et de veiller à ce que les directives de mise en application soient réfléchies et efficaces. La Loi de 1987 sur les régimes de retraite contient une disposition de protection-inflation obligatoire qui, lorsqu'elle entrera en vigueur, sera la première norme législative de protection contre l'inflation en Amérique du Nord. La mise en application des mesures préconisées ici devrait encourager d'autres paliers de compétence à suivre l'exemple de l'Ontario sur cette question importante.

A System of Shared Responsibility for Retirement Income

Employment pension plans are only one component of Canada's multi-faceted retirement income system.

Government programs create a significant floor of retirement income for most individuals through:

- Old Age Security (OAS) benefits to which all Canadian residents are entitled;
- Canada Pension Plan/Quebec Pension Plan (C/QPP) benefits to which all employees and self-employed persons contribute; and
- federal Guaranteed Income Supplement (GIS) and provincial supplementary programs, including Ontario's Guaranteed Annual Income System (GAINS), which provide a further source of retirement income assistance for qualifying pensioners.

In addition, individuals provide for additional sources of retirement income through:

- tax deferred savings arrangements such as Registered Retirement Savings Plans and Deferred Profit Sharing Plans;
- employment pension plans established by employees and registered under the Income Tax Act, and
- personal savings and investments.

The proposals outlined in this paper deal specifically with employment pension plans. While Ontario supports improvements to other public and private retirement income programs, it should be recognized that various government-sponsored programs are funded to a large degree from current tax revenues. Several studies have suggested that current tax levies will be insufficient to meet the increasing demands on the public retirement income system as more Canadians become eligible. At the same time, CPP/QPP contribution rates are already scheduled to increase in each year until 2011 in order to maintain current benefit levels. Other factors that will impact on the retirement income system are the proposals to amend the Income Tax Act to allow for increases in contribution rates for RRSPs. The basic recognition that a total contribution of 18% of current income should be set aside over a working career to provide an acceptable level of retirement income is contained in these tax proposals.

Therefore, while recognizing that employment pension plans are only one source of retirement income for individuals and their families, the key objective of the legislative reforms proposed in this paper is to enhance the role of employment pensions in meeting the needs of Ontario's pensioners, both present and future.

Système de partage des responsabilités du revenu de retraite

Les régimes professionnels ne sont qu'un élément de cet ensemble complexe qu'est le système canadien de revenu de retraite.

Les programmes gouvernementaux offrent un seuil appréciable de revenu de retraite à la plupart des citoyens :

- prestations du Programme de sécurité de la vieillesse (PSV) auxquelles ont droit tous les Canadiens de 65 ans et plus résidant au pays;

- prestations du Régime de pensions du Canada (RPC)/Régime des rentes du Québec (RRQ) auxquels cotisent tous les employeurs, employés et travailleurs autonomes, et

- le Supplément fédéral de revenu garanti (SRG) et les programmes provinciaux supplémentaires, notamment le Régime de revenu annuel garanti (RRAG) de l'Ontario, qui sont une autre source de maintien du revenu de retraite pour les personnes répondant aux conditions d'admissibilité.

De plus, chaque citoyen peut obtenir d'autres sources de revenu de retraite par certains moyens :

- mécanisme d'épargne à impôt différé, par exemple les régimes enregistrés d'épargne-retraite ou de participation différée aux bénéfices;

- les régimes de retraite professionnels créés par les employeurs et inscrits en vertu de la Loi de l'impôt sur le revenu, et

- l'épargne et les investissements personnels.

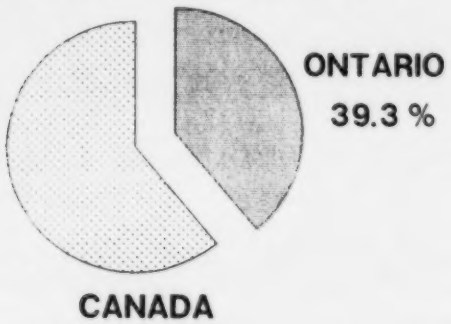
Les propositions décrites ici touchent spécifiquement les régimes de retraite professionnels. L'Ontario est favorable à l'amélioration des autres programmes publics et privés de revenu de retraite, mais il faut savoir que le niveau des dépenses gouvernementales à l'appui des revenus de retraite est loin d'être illimité, car d'autres priorités de dépense sont plus pressantes et le gouvernement ne peut augmenter ses recettes à l'infini. En même temps, les taux de cotisation RPC/RRQ doivent déjà augmenter chaque année jusqu'en 2011, pour maintenir les prestations à leur niveau actuel. On reconnaît de plus en plus l'importance des régimes privés d'épargne-retraite pour répondre aux attentes actuelles des citoyens en matière de revenu de retraite et de mode de vie. L'un des objectifs des réformes législatives présentées ici est de faire en sorte que les régimes professionnels jouent un plus grand rôle pour répondre aux besoins des retraités ontariens actuels et futurs.

A Balanced Approach

Approximately 1.9 million people, or 38% of Ontario's total labour force are members of employment pension plans. In 1987, this figure represented 39% of total pension plan members in Canada. The fact that two out of every five pension plan members in Canada live in Ontario suggests that Ontario has a special responsibility to ensure that pension reform is an ongoing process and that employment pension plan standards reflect changing social and economic circumstances. See Appendix B and Figure 1 below.

Figure 1

TWO OUT OF FIVE PENSION PLAN MEMBERS IN CANADA LIVE IN ONTARIO



Source: Statistics Canada, Pension Plans in Canada, 1986, Catalogue 74-401

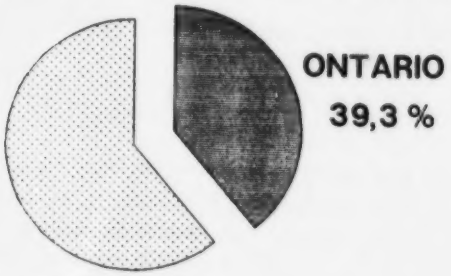
Pension reform must balance the objectives of enhancing pension benefits of existing pension plan members with the maintenance of a regulatory environment which fosters the continuation of existing pension plans and promotes increased pension coverage for Ontario's employees not currently benefiting from employment pension plans. The Pension Benefits Act, 1987 was an important step in addressing pension reform issues and redressing inequities that had long been overlooked. The amendments set out in this paper continue the pension reform process in an attempt to balance benefit improvements and expansion of pension coverage with the demands of regulatory compliance and benefit security.

Une stratégie équilibrée

Environ 1,9 million de personnes, soit 38 % de la main-d'oeuvre ontarienne, font partie d'un régime de retraite professionnel. En 1987, cela équivalait à 39 % de l'ensemble des Canadiens participant à des régimes de retraite (voir Annexe B). Le fait que les deux cinquièmes des Canadiens participant à des régimes de retraite vivent en Ontario permet de conclure que la province a une responsabilité spéciale : elle doit faire en sorte que la réforme des régimes de retraite soit un processus permanent et que les normes des régimes professionnels suivent le contexte socio-économique.

Figure 1

LES DEUX CINQUIÈMES DES CANADIENS PARTICIPANT À DES RÉGIMES DE RETRAITE VIVENT EN ONTARIO



Source: Statistique Canada, Régimes de pensions au Canada, 1986, n° de catalogue 74-401

La réforme doit parvenir à un équilibre entre ses objectifs, c'est-à-dire relever le niveau et la sécurité des prestations de retraite des régimes actuels, et maintenir un contexte réglementaire favorisant la continuité des régimes actuels et la création de nouveaux régimes pour les employés ontariens qui ne bénéficient pas encore de régimes de retraite professionnels. La Loi de 1987 sur les régimes de retraite marque une étape importante dans la recherche de solutions aux questions de réforme de ces régimes et le redressement des inégalités longtemps négligées. Les amendements formulés ici continuent le processus de réforme, sur des principes établissant un équilibre entre ces objectifs divergents.

The pension reform proposals which are put forward for discussion in this paper deal with the most important and controversial aspects of pension reform. The issues of inflation protection, surplus, funding, security of benefits and coverage have all, at one time or another, been the focus of the pension debate in Canada. It is recognized that these are issues on which there are strong and divergent views and the stakes involved are significant. At the end of the second quarter of 1988, assets of trusteed pension plans in Canada totalled $149 billion.[1] In recent years, reform proposals have reflected an attempt to balance a number of competing interests. These include:

- enhancement of current pensioners' benefits;
- security of funding and appropriate future benefits for current plan members;
- maintenance of fiscal responsibility and strong regulation as basic to society's needs;
- capital market efficiency and assurance that appropriate investment of funds flow from the private pension system; and
- continued competitive advantage and adequate capital for Ontario employers in a changing economy.

The pension reform proposals set out in this paper present a comprehensive approach to balancing these various interests.

THE REFORM PROCESS

Pension reform is a dynamic process. Government regulation of employment pensions has developed in response to social and economic changes, and as a result of innovations in the private retirement savings sector, including the introduction of new investment and savings vehicle, and recognition of changes in the nature of pension agreements between employers and employees. Today, the key challenges of pension reform can be linked to the recent experience of inflation and cyclical economic growth, a growing and increasingly mobile labour force, trends and innovations in the financial services sector, changed attitudes about the nature of employee compensation and implementation of the Canada-U.S. Free Trade Agreement. Pension legislation must also reflect the need for compatibility among jurisdictions with highly mobile populations.

Employment pension plans were originally introduced as a reward for long service. Not surprisingly, the earliest employer-sponsored pension plans in Canada were for members of the military and railway workers. During these formative years, employer responsibility for and control of pension plans was absolute. Over time, employment pensions have also served to promote the recruitment of skilled workers and to facilitate the replacement of older workers with

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[1] Statistics Canada quarterly estimates of trusteed pension plan assets. This figure does not include Consolidated Revenue Fund reserves for public sector plans, Canadian government annuities or insurance company annuities.

Ces projets de réforme touchent les aspects les plus importants et les plus controversés de la réforme des régimes de retraite. La protection contre l'inflation, les excédents, le provisionnement, la sécurité des prestations et les adhésions, voilà autant de questions qui, à tour de rôle, ont pris la vedette dans le débat sur les régimes de retraite au Canada. Bien sûr, ce sont des questions sur lesquelles on a pris des positions fortes et divergentes, surtout si l'on songe à l'actif accumulé dans les caisses de retraite en fiducie qui, à la fin du deuxième trimestre de 1988, s'établissait à 149 milliards de dollars.[1] Les propositions de réforme de ces dernières années traduisaient une volonté de concilier un certain nombre d'intérêts conflictuels:

- amélioration des prestations des retraités actuels;
- sécurité du financement et prestations futures appropriées pour les participants actuels;
- maintien de la responsabilité financière et d'une forte réglementation essentielles aux besoins de la société;
- efficacité sur le marché des capitaux et garantie que le système des régimes privés investit les fonds de façon adéquate; et
- maintien de l'avantage concurrentiel et de capitaux adéquats pour les employeurs ontariens, dans une économie en mutation.

Les réformes formulées ici constituent une démarche globale visant à équilibrer ces intérêts divers.

Le mécanisme de réforme

La réforme des régimes de retraite est un mécanisme dynamique. La réglementation gouvernementale des régimes professionnels s'est développée pour répondre à des changements socio-économiques et aux innovations dans le secteur des régimes privés d'épargne-retraite, notamment l'introduction de nouveaux véhicules d'investissement et d'épargne, et en reconnaissance des changements survenus dans la nature des ententes conclues entre les employeurs et les employés. De nos jours, les grands défis de la réforme des régimes de retraite ont certainement des liens avec les crises inflationnistes récentes et le cycle de la croissance économique, l'augmentation de la main-d'oeuvre et de sa mobilité, ainsi que les tendances et innovations dans le secteur des services financiers, les attitudes nouvelles sur la nature des régimes d'indemnisation des employés, sans oublier la mise en application de l'Accord de libre-échange entre le Canada et les États-Unis. La Loi sur les régimes de retraite doit aussi tenir compte de la nécessité de maintenir la compatibilité entre compétences, afin de faciliter le parrainage de régimes de retraite dans les entreprises établies dans plusieurs provinces.

À l'origine, les régimes professionnels étaient une sorte de récompense pour longs états de service. Il ne faut pas s'étonner que les premiers régimes de retraite canadiens parrainés par l'employeur se soient adressés aux militaires et aux travailleurs des chemins de fer. Pendant ces années de gestation, l'employeur avait la responsabilité et le contrôle absolu de son régime de retraite. Au fil du temps, les régimes professionnels ont également servi à promouvoir le recrutement de travailleurs compétents et à faciliter le remplacement des

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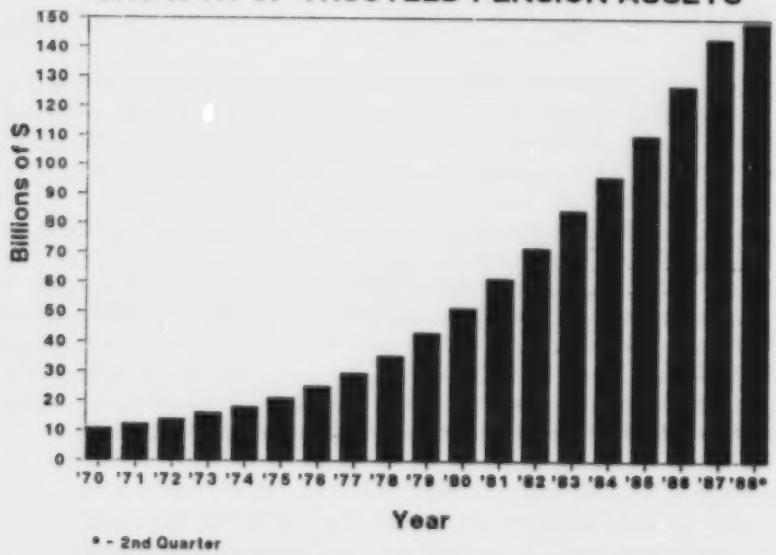
1 Évaluation trimestrielle de Statistique Canada sur l'actif des régimes de retraite en fiducie. Ce montant exclut les réserves du Trésor public pour les régimes du secteur public, ainsi que les rentes du gouvernement du Canada et des sociétés d'assurance.

young recruits. In recent years, pensions have become an integral part of the collective bargaining process. This factor, in particular, has contributed to the recognition of pensions as part of the compensation package.

While income deferral is the key function of employment pensions, other factors are increasingly influencing the nature and use of employment pension funds. As a result, government regulation has evolved from an original intent to establish minimum standards for pension plans to an approach which encompasses a more integrated financial and social policy purview.

Pension reform costs directly affect the competitiveness of employers. In addition, with the unprecedented growth of pension funds in the 1970's and 1980's resulting in large accumulations of capital, pension funds have also had a significant impact on capital markets and on the economy in general. Background studies conducted for the Task Force on Inflation Protection indicated that pension-related savings currently finance about one-third of Canada's investment needs and account for up to one-half of the net new securities issued in Canada.[2] In the past twenty-five years, pension assets of trusteed pension funds alone have grown from $15 billion to $149 billion as indicated in Figure 2 below.

Figure 2
GROWTH OF TRUSTEED PENSION ASSETS



Source: Statistics Canada, Trusteed Pension Funds, Catalogue 74-201, and Quarterly Estimates of Pension Funds, Catalogue 74-001

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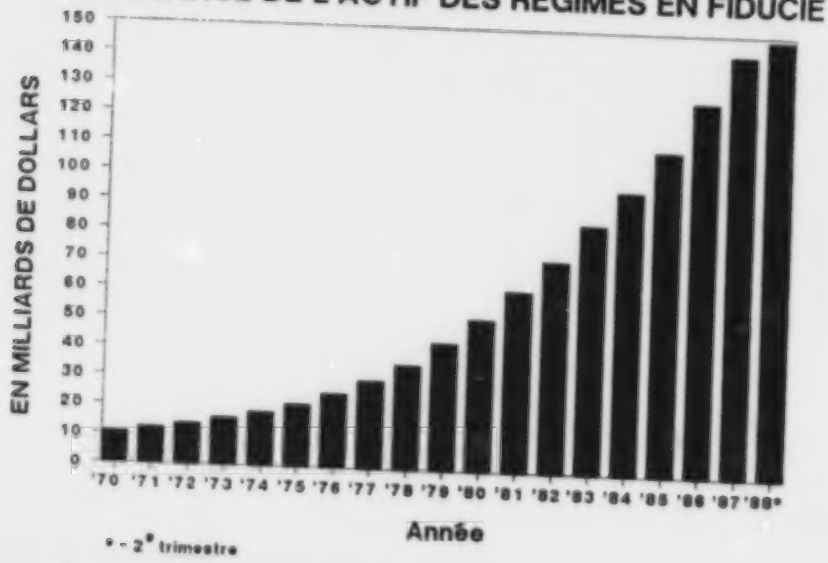
[2] Ambachtsheer, Keith P. "The Potential Impact of Mandated Inflation Protection on Capital Markets", Report of the Task Force on Inflation Protection for Employment Pension Plan Research Studies, (1988), Vol. 2, pg. 3

travailleurs plus âgés par de plus jeunes. Ces dernières années, ils se sont intégrés au mécanisme des négociations collectives. C'est un facteur qui, en particulier, a favorisé la reconnaissance des régimes de retraite comme partie du système d'indemnisation et de rémunération.

Le report du revenu est la fonction essentielle des régimes professionnels, mais d'autres facteurs influent de plus en plus sur la nature et l'affectation des caisses de retraite professionnelles. Voilà pourquoi la réglementation gouvernementale, dont l'objet initial était d'établir des normes minimales sur les régimes de retraite, s'est progressivement axée sur une stratégie de politique financière et sociale plus intégrée.

La croissance sans précédent des caisses de retraite depuis deux décennies a abouti à l'accumulation de capitaux énormes, de sorte que ces caisses ont également eu une incidence très forte sur les marchés des capitaux et sur l'économie. D'après les études de fond réalisées pour le Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation, les épargnes liées aux rentes financent actuellement environ le tiers des besoins d'investissement du Canada et représentent la moitié des nouveaux titres nets émis au Canada.[2] Depuis vingt-cinq ans, l'actif de rentes des seules caisses de retraite en fiducie est passé de 15 milliards de dollars à 149 milliards de dollars, comme on peut le constater ci-après.

Figure 2
CROISSANCE DE L'ACTIF DES RÉGIMES EN FIDUCIE



Source: Statistique Canada, Caisses de retraite en fiducie, n° 74-201, et Évaluations trimestrielles des caisses de retraite, n° de catalogue 74-001

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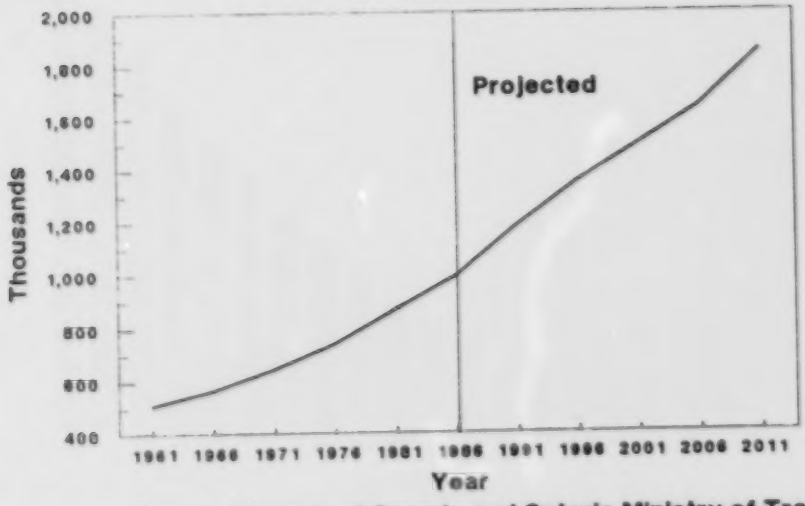
2 Ambachtsheer, Keith P., «The Potential Impact of Mandated Inflation Protection on Capital Markets», Tome 2, page 3 des Études de recherche du Rapport du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation.

As pension assets have come to represent a significant asset for individual employees, legislation has also been enacted which is designed to achieve security of plan members' benefits through disclosure requirements, investment rules and conflict-of-interest restrictions. As pension funds have grown and governance requirements have been recognized, the "prudent person" test has been introduced to enable plan administrators to assume greater flexibility in their investment portfolios, while requiring that pension assets be invested with prudence and in accordance with diversification standards.

THE PENSION CONTEXT

One of the greatest challenges facing pension policy makers at this time is the demand for reliable sources of retirement income that will result from the "greying" of Canada's population. As indicated in Figure 3 below, if prevailing trends in fertility rates, longevity and immigration policies continue over the next 25 years, the proportion of people over 65 years of age in Ontario will increase 86%, and by 2011, close to half (47%) of the elderly will be 75 or over, compared to 39% in 1986.

Figure 3
POPULATION IN ONTARIO AGED 65 AND OVER



Source: Census of Canada and Ontario Ministry of Treasury and Economics

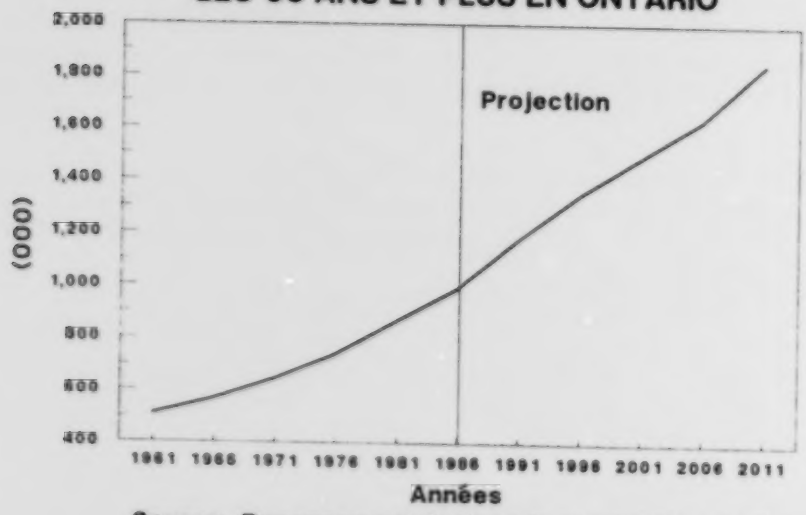
The demand for increased and improved employment pensions is likely to be fuelled by the maturation of the "baby boom" generation and the realization that public pension programs cannot meet the retirement expectations of everyone. A growing awareness of employment pension issues is already underway as a result of the publicity surrounding the issues of

La rente est devenue un avoir important pour chaque employé, de sorte que le législateur a adopté des mesures visant à accroître la sécurité des prestations des participants grâce aux exigences de divulgation, aux règles d'investissement et aux restrictions relatives aux conflits d'intérêt. À mesure que croissaient les caisses de retraite et qu'on reconnaissait la nécessité de les régir, on a aussi introduit la règle du «bon père de famille», pour offrir aux administrateurs des régimes plus de souplesse, dans leurs portefeuilles d'investissement, tout en exigeant que l'actif des caisses soit investi avec prudence et conformément aux normes de diversification.

Le contexte des régimes de retraite

Actuellement, l'un des grands défis que doivent relever les responsables de la politique des régimes de retraite touche la demande de sources fiables de revenus de retraite, situation qui résulte du «grisonnement» de la population du Canada. Ainsi que l'illustre la figure ci-dessous, si les tendances actuelles (taux de fertilité, longévité et politiques d'immigration) se maintiennent au cours des 25 prochaines années, la proportion des plus de 65 ans en Ontario augmentera de 86 %, tandis que, vers 2011, près de la moitié des aînés (47 %) auront atteint 75 ans, comparativement à 39 % en 1986.

Figure 3
LES 65 ANS ET PLUS EN ONTARIO



Source: Recensement du Canada et ministère du Trésor et de l'Économie de l'Ontario

La demande de rentes professionnelles meilleures et plus importantes sera probablement alimentée par le mûrissement de la génération du «baby boom» et la constatation que les programmes publics ne peuvent répondre aux attentes de tous, à l'époque de la retraite. Les gens sont de plus en plus sensibilisés aux questions des rentes professionnelles, par suite de

inflation protection and surplus ownership. One of the key goals of pension reform, therefore, must be to foster the continued stability and growth of the private pension system to ensure that individuals have access to this important source of retirement savings.

The current diversity of plan designs and benefit levels reflects the fact that employment pension plans develop in response to the varying needs and priorities of both employers and employees. This heterogeneity of plan types and compositions was reaffirmed by the research conducted by the Task Force for Inflation Protection for Employment Pension Plans.[3] The results of this study underline the variety of ways that plans adapt to changes in benefit expectations and demands accruing to financial and economic circumstances. This is particularly important for employers in cyclical industries where pension funding flexibility can improve a firm's ability to weather economic downturns.

One other uncertainty facing Ontario employers and employees is the impact of the Canada-U.S. Free Trade Agreement. On the one hand, increased competition for skilled workers could motivate more employers to offer more and better pensions to attract and maintain good workers, thereby leading to the creation of new plans. On the other hand, counterbalancing pressures for rationalization or downsizing in certain firms could increase demands for enhanced early retirement benefits in existing plans or could even result in the termination of some plans.

The challenge facing governments is to develop pension reform initiatives that will ensure adequate flexibility for the varying needs and priorities of different employers and employees.

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[3] Wolfson, Michael, "Pension Plans in Ontario" A Statistical Overview", Report of the Task Force on Inflation Protection, Background Studies, Vol. 1.

la publicité entourant le débat sur la protection contre l'inflation et sur la propriété des excédents. L'un des grands objectifs de la réforme des régimes de retraite est donc de favoriser la stabilité et la croissance du système privé, pour que les citoyens aient accès à cette source importante d'épargne-retraite.

La diversité actuelle dans la conception des régimes et les niveaux des prestations rend compte du fait que les régimes professionnels se développent pour répondre à l'évolution des besoins et des priorités des employeurs et des employés. Cette hétérogénéité de types et de composition des régimes a été une fois de plus constatée dans les recherches du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation.[3] Les résultats de cette étude ont permis de dégager les diverses façons par lesquelles les régimes s'adaptent aux changements dans les attentes et les demandes de prestations par suite des circonstances financières et économiques. C'est particulièrement important pour les employeurs des industries cycliques où une certaine souplesse de provisionnement du régime peut rendre l'entreprise plus capable d'amortir les difficultés économiques.

Parmi les autres incertitudes qui inquiètent les employeurs et les employés ontariens, il faut compter les répercussions de l'Accord de libre-échange Canada-États-Unis. Ainsi, le resserrement de la concurrence pour l'obtention de travailleurs spécialisés pourrait motiver un plus grand nombre d'employeurs à offrir plus ou davantage de rentes, afin d'attirer et de conserver les travailleurs compétents, ce qui aboutirait à la création de nouveaux régimes. Par ailleurs, les pressions compensatoires de rationalisation ou de compression d'effectif dans certaines entreprises pourraient provoquer un accroissement de la demande de prestations de retraite anticipée dans les régimes en place et pourraient même aboutir à la cessation de certains régimes.

Le défi des gouvernements, dans le domaine des régimes de retraite, est de préparer des initiatives de réforme offrant assez de souplesse pour répondre aux besoins et priorités qui diffèrent selon les employeurs et les employés.

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3 Wolfson, Michael, «Pension Plans in Ontario, A Statistical Overview», Tome 1 des Études de fond du Rapport du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation

III. POLICY PRINCIPLES FOR REFORM

The proposals set out in this discussion paper build on the reform consensus derived from the Pension Benefits Act, 1987, the Report of the Task Force on Inflation Protection for Employment Pension Plans, and the consultation process to date. It is evident that the pension debate is underscored by certain basic principles that shape the direction of reform:

- protection of pension benefits;
- effective and strengthened regulatory framework;
- equitable and modern standards;
- provision of adequate time to adjust to pension reforms; and
- maintenance and expansion of the voluntary employment pension system.

Protection of Pension Benefits

The security of pensions is fundamental to the overall strength and integrity of the employment pension system. This security includes reducing the potential financial hardship experienced by protecting the purchasing power of pensions from erosion. The Report of the Task Force on Inflation Protection emphasized that the decline in the real value of a pension represents an unfair redistribution of pension income away from retirees to current and future plan members and employers. Of equal importance is the goal of ensuring the adequate and appropriate funding of promised benefits, particularly those benefits that would be jeopardized in situations where a pension plan is wound up as a result of employer insolvency. In the past, a limited level of protection of pension benefits for some workers has been provided by Ontario's Pension Benefits Guarantee Fund. In the context of the other proposed pension reforms, the government is reviewing the nature and role of the Fund in providing this supplementary protection.

Effective Administrative Framework

The Pension Benefits Act, 1987 reforms signified an important step in improving the standards and conditions of employment pensions in Ontario. The new Act also resolved a number of problems and inequities that had been identified over the years. Certain areas in particular must be remedied to ensure the effective application of the original policy intent. Other changes are required to clarify the powers of the Superintendent and the Pension Commission of Ontario to administer and interpret the requirements of the Act in an effective and timely manner on behalf of Ontario's workers.

As well, specific proposals and draft legislation contained in this paper are intended to clarify the intent and application of certain provisions which have been identified as problematic. Where new legislative requirements are proposed, an attempt has been to provide draft legislative language which will be clear and comprehensible. It is also proposed that the ability of the Pension Commission of Ontario to provide interpretations of the Act and Regulations be expanded in order to facilitate understanding and compliance. An effective administrative framework is essential for the responsibile and efficient management of employment pension plans.

III. LES GRANDS PRINCIPES DE LA RÉFORME

Les propositions énoncées ici tirent parti du consensus de réforme découlant de la Loi de 1987 sur les régimes de retraite, du Rapport du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation, ainsi que des consultations tenues jusqu'à maintenant. Il est évident que le débat repose sur certains grands principes qui orientent la réforme :

- protection des prestations de retraite;
- cadre réglementaire efficace et plus ferme;
- normes équitables et modernes;
- délai suffisant pour s'adapter aux réformes et
- maintien et élargissement du système des régimes professionnels volontaires.

Protection des prestations de retraite

La sécurité des rentes est un élément essentiel à la force et à l'intégrité globales du système des régimes professionnels. Cette sécurité implique la réduction des difficultés financières que pourraient éprouver les retraités par suite de la protection contre l'érosion du pouvoir d'achat des rentes. Dans son rapport, le Groupe d'étude soulignait que le déclin de la valeur réelle d'une rente est une redistribution injuste du revenu de retraite au détriment des retraités et au bénéfice des employeurs et des participants actuels et futurs. Objectif tout aussi important : garantir un provisionnement adéquat des prestations promises, notamment celles qui seraient exposées si un régime était liquidé par suite d'insolvabilité de l'employeur. Par le passé, le Fonds de garantie des prestations de retraite (FGPR) de l'Ontario offrait une protection modeste aux prestations de certains travailleurs, mais il ne serait ni équitable ni financièrement responsable de s'attendre qu'il prenne la relève et remplace le provisionnement adéquat de chacun des régimes de retraite.

Cadre administratif efficace

Par les réformes qu'elle apportait, la Loi de 1987 sur les régimes de retraite marquait une étape importante dans la modération des normes et conditions des régimes de retraite en Ontario. La nouvelle loi réglait en outre un certain nombre de problèmes et d'injustices constatés au fil des ans. La nouvelle loi est en vigueur depuis peu, mais un certain nombre de problèmes connexes se dégagent des dispositions législatives initiales. Il faut notamment corriger certaines lacunes pour garantir une application efficace de l'intention initiale du législateur. D'autres changements nécessaires visent à clarifier les pouvoirs du surintendant et de la Commission des régimes de retraite de l'Ontario en matière d'administration et d'interprétation efficaces et opportunes de la loi au nom des travailleurs ontariens.

Les projets de mesures législatives et les propositions qui figurent aux présentes visent de plus à préciser la portée et l'application de certaines dispositions jugées problématiques. Dans les cas où nous envisageons de nouvelles exigences législatives, nous nous sommes efforcés d'employer une formulation juridique claire et compréhensible. L'une de ces propositions est d'élargir les pouvoirs de la Commission des régimes de retraite de l'Ontario de donner des interprétations de la loi et du règlement, afin d'en faciliter la compréhension et le respect. Il est essentiel de mettre en place un cadre administratif efficace, pour que les régimes professionnels soient gérés adéquatement, de façon responsable.

Equitable and Modern Standards

One of the objectives of the Pension Benefits Act, 1987 was to update the standards of Ontario pension regulation to correspond to changing social and economic realities, such as the increasing mobility of Canada's labour force, new rules governing the division of family assets on marriage breakdown, and the principle of equality under the Charter of Rights and Freedoms. Extensive consultation and care was taken to ensure the effectiveness of the new Act to provide a modern and equitable framework for employment pensions in Ontario. However, a number of technical problems have been identified in the Pension Benefits Act, 1987 that impede the fair and effective application of these original reforms. The policy recommendations proposed in this paper attempt to rectify these problems.

Provision of Adequate Time to Adjust to Pension Reforms

Many of the proposals set out in this paper involve amendments to current requirements under the Act. Other reforms, including the proposals regarding inflation protection, would introduce new benefit provisions or regulatory requirements for Ontario pension plans. Particularly where proposed reforms would involve potential cost increases, it is desirable to provide plan sponsors, bargaining agents, and plan members with sufficient time to plan for orderly adjustments to the cost impact of these changes. Wherever possible, retroactive reforms should be avoided.

Maintenance and Expansion of the Voluntary Employment Pension System

The reform proposals contained in this paper recognize that the current and future growth of the voluntary employment pension system will depend on the ability of such a system to respond to the changing needs of employers and employees. This involves the competing objectives of providing improved benefits for plan members and appropriate funding and administrative flexibility for plan sponsors. The proposals outlined in this paper attempt to balance these two objectives, by improving protection of benefits for plan members while expanding the alternatives available to plan sponsors for maintaining and enhancing plan benefits. Extensive research and consultation can identify other regulatory or systemic barriers which may be discouraging voluntary employment pension plan expansion and to identify target groups and mechanisms for increasing employment pension coverage.

Normes équitables et modernes

L'un des objectifs de la nouvelle loi était de moderniser les normes et la réglementation ontariennes des régimes de retraite afin qu'elles correspondent aux réalités socio-économiques changeantes, par exemple la mobilité croissante de la main-d'oeuvre canadienne, les nouvelles règles de répartition des biens familiaux à la rupture du mariage, ainsi que le principe de l'égalité prévu à la Charte des droits et libertés. Le gouvernement de l'Ontario a mené des consultations poussées et n'a pas ménagé ses efforts pour s'assurer que la nouvelle loi offre un cadre moderne et équitable aux régimes professionnels de la province. Cependant, un certain nombre de problèmes techniques ont été dégagés, dans la Loi de 1987 sur les régimes de retraite et ces problèmes empêchent l'application juste et efficace des réformes initiales. Les recommandations qui figurent aux présentes visent à corriger ces problèmes.

Délai suffisant d'adaptation aux réformes

Nombre des propositions énoncées ici supposent des amendements aux exigences actuelles de la loi. D'autres réformes, notamment en ce qui a trait à la protection contre l'inflation, introduiraient de nouvelles dispositions relatives aux prestations ou d'autres exigences réglementaires pour les régimes de retraite de l'Ontario. Surtout là où les réformes projetées supposent une augmentation éventuelle des coûts, il est souhaitable de laisser aux promoteurs, aux agents négociateurs et aux participants assez de temps pour faire face aux coûts que supposent ces changements. Dans la mesure du possible, il faut éviter les réformes rétroactives obligatoires.

Promotion et expansion du système volontaire de régimes professionnels

Dans ces propositions de réforme, nous reconnaissons que la croissance actuelle et future du système volontaire de régimes de retraite dépendra de la capacité de celui-ci de répondre aux besoins changeants des employeurs et des employés, ce qui suppose de trouver une solution aux objectifs conflictuels, à savoir offrir aux participants de meilleures prestations et, aux promoteurs, suffisamment de souplesse au niveau du provisionnement et de l'administration. Ces deux objectifs sont réconciliés par une meilleure protection des prestations des participants, en même temps que par l'élargissement des possibilités offertes aux promoteurs à l'égard du maintien et de l'enrichissement des prestations du régime. De plus, par des recherches et des consultations, nous comptons dégager d'autres obstacles systémiques ou réglementaires susceptibles de jouer contre l'expansion des régimes professionnels volontaires et identifier les groupes cibles et les mécanismes d'augmentation du nombre d'adhésions.

IV. THE POTENTIAL FOR INCREASED PENSION COVERAGE

Employer-sponsored pension plans provide an important source of retirement income for Ontario employees and their families. At the present time, however, less than half of Ontario workers participate in employment pension plans.

Ontario is committed to expanding voluntary employment pension coverage, and new eligibility and vesting rights under the Pension Benefits Act, 1987 will make it easier for part-time and mobile workers to participate in employment pension plans. Within a voluntary framework, there will be certain social and economic factors, including income levels, and corporate financial circumstances that will restrict the ability of employers and employees to participate in employment pension plans. There are some indications, however, that other structural factors such as levels of awareness and understanding of pensions, complex administrative requirements, and the current range and distribution of pension products may also be affecting employment pension coverage levels. The government will investigate the barriers that may be limiting pension plan coverage and identify target groups and mechanisms for encouraging greater participation in pension plans by Ontario employers and employees.

System of Shared Pension Responsibilities

The existing pension system in Canada is a blend of mandatory and voluntary arrangements which divides the responsibility for the provision of retirement income among government, corporate interests and individuals.

Through the universal Old Age Security program, the contributory Canada/Quebec Pension Plans (C/QPP), the income-tested federal Guaranteed Income Supplement program (GIS), and supplemental programs such as Ontario's Guaranteed Annual Income System (GAINS), governments ensure that individuals receive a basic level of retirement income. These public pension programs are vital to the retirement security of Canadians because they provide a basic floor of pension income. Other government benefits such as housing assistance, fully subsidized prescription drugs and the waiver of premiums for the Ontario Health Insurance Plan (OHIP), provide further income assistance to Ontario's seniors.

Individuals and families exercise their responsibility for preparing for retirement through the accumulation of personal property, savings and tax-assisted private pension vehicles, such as Registered Retirement Savings Plans (RRSPs). Revenue Canada statistics indicate that total Canadian RRSP contributions increased from $225 million in 1970 to nearly $6.7 billion in 1985, representing 2.9 million contributors. More importantly, since 1976, aggregate annual RRSP contributions have exceeded employee contributions to employer-sponsored pension plans.[4]

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[4] Statistics Canada, Pension Plans in Canada, 1986.

IV. POSSIBILITÉ D'EXPANSION DES ADHÉSIONS

Les régimes d'employeurs sont une importante source de revenu de retraite pour les travailleurs ontariens et leur famille. Par contre, pour le moment, moins de la moitié des travailleurs de l'Ontario adhèrent à des régimes professionnels.

L'Ontario veut accroître l'adhésion aux régimes professionnels volontaires. Les nouvelles règles de la Loi de 1987 sur les régimes de retraite touchant l'admissibilité et les droits d'acquisition faciliteront aux travailleurs mobiles et à temps partiel l'adhésion aux régimes professionnels. À l'intérieur d'un cadre volontaire, il demeurera certains facteurs socio-économiques, par exemple les niveaux de revenu et la situation financière des entreprises, qui restreindront la capacité des employeurs et des employés de prendre part à des régimes de retraite professionnels. Cependant, certains indices permettent de conclure que d'autres facteurs structurels, par exemple les niveaux de sensibilisation et de compréhension, la complexité des exigences administratives, ainsi que la gamme et la répartition actuelles des produits de rente, peuvent aussi influer sur les niveaux d'adhésion aux régimes professionnels. Le gouvernement analysera les obstacles susceptibles de limiter le nombre d'adhérents, identifiera les groupes cibles et mettra sur pied des mécanismes pour favoriser, chez les employeurs et les employés de l'Ontario, une plus grande participation aux régimes de retraite.

Un système de responsabilités partagées

Le système canadien actuel est un mélange de mécanismes obligatoires et volontaires où la responsabilité de constituer un revenu de retraite est partagé entre le gouvernement, les entreprises et les citoyens.

Grâce au Programme (universel) de sécurité de la vieillesse, à des régimes contributifs comme le Régime de pensions du Canada et le Régime des rentes du Québec (RPC/RRQ), au programme de Supplément de revenu garanti (SRG) fédéral, qui est axé sur le revenu, ainsi qu'à des programmes supplémentaires comme le Régime de revenu annuel garanti (RRAG) de l'Ontario, les gouvernements veillent à ce que les citoyens aient un revenu de retraite de base. Ces programmes publics sont un élément essentiel de sécurité de la retraite pour les Canadiens, car ils garantissent un seuil minimal de revenu de retraite. De plus, d'autres avantages gouvernementaux offerts, par exemple l'aide au logement, les subventions pour les médicaments sur ordonnances et l'abandon des cotisations au Régime d'assurance-maladie de l'Ontario (OHIP) sont, pour les aînés ontariens, autant de mécanismes supplémentaires de soutien du revenu.

Il incombe aux personnes et aux familles de se préparer à la retraite par l'accumulation de biens personnels, par l'épargne et au moyen de véhicules d'épargne-retraite à avantages fiscaux, par exemple les régimes enregistrés d'épargne-retraite (REER). D'après les données statistiques de Revenu Canada, le total des cotisations aux REER est passé de 225 millions de dollars en 1970 à près de 6,7 milliards de dollars en 1985, pour 2,9 millions de cotisants. Élément plus important, depuis 1976, l'ensemble des cotisations annuelles aux REER a

The phasing-in of higher RRSP contribution limits over the next few years can be expected to facilitate further participation by individuals in RRSPs.

Employment pension plans are established and maintained on a discretionary basis by employers. Sponsorship of pension plans is generally considered to be affected by a company's earnings, size and stability. Pension coverage in general varies by sector and employer characteristics. Employment pension coverage is considered to be reasonably broad in the public sector, as well as in large businesses in the private sector, particularly in unionized industries. However, employment pension coverage is low in small and medium-sized businesses[5] and in the service and retail sectors of the economy. High employee turnover rates and relatively high administrative costs on a per member basis may pose a barrier to pension plan establishment for some smaller employers. Sole proprietors and small businesses may prefer to contribute to RRSPs or to develop other, perhaps business-related, capital investments. In many cases, an RRSP offers a more flexible retirement savings vehicle for businesses with uneven income and expenditure patterns. But most new businesses usually cannot consider sponsoring a pension plan until they have established a secure financial footing.

There are also various factors which affect employee interest and participation in employer-sponsored pensions. For example, age can have an effect on the importance an individual places on participating in employment pension plans or other retirement savings programs. Younger workers and those with lower salaries may have more immediate savings and spending priorities than older or better paid workers. Not surprisingly, for many younger workers, the costs associated with buying a home or establishing a family take precedence over retirement savings.

Certain groups of employees, including full-time, low income workers and part-time workers have traditionally not participated in employment pension plans due to income or eligibility restrictions. In the past, many employers chose to require employees to work for their company for an extended period before qualifying for pension plan membership. This factor, combined with age-plus-service vesting provisions restricted employment pension coverage levels particularly for mobile workers. Other employment benefits, such as profit-sharing arrangements, supplementary health or life insurance, may also be considered a priority over pensions by some employers and employees.

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[5] 1-99 employees and 100-499 employees respectively

dépassé les cotisations des employés aux régimes professionnels d'employeurs.[1] Le relèvement progressif des limites de cotisation aux REER, au cours des quelques prochaines années, devrait faciliter une participation accrue des citoyens à ces régimes.

Les régimes professionnels sont créés et maintenus sur une base discrétionnaire par les employeurs; le parrainage d'un régime dépend généralement des gains, de la taille et de la stabilité de l'entreprise. L'adhésion au régime varie en général selon le secteur et les caractéristiques de l'employeur. On estime que l'adhésion aux régimes professionnels est assez large dans le secteur public, ainsi que dans les grandes entreprises privées, particulièrement les industries où le syndicalisme est actif. Cependant, l'adhésion aux régimes professionnels est faible dans les petites et moyennes entreprises[2], dans le secteur des services et le commerce de détail. Un fort taux de roulement des employés et des coûts administratifs relativement élevés par participant peuvent poser un obstacle à la création de régimes de retraite chez certains petits employeurs. Les entreprises à propriétaire unique et les petites entreprises préfèrent souvent cotiser à des REER ou mettre en place d'autres types d'investissements, parfois liés à l'entreprise. Bien souvent, le REER est un régime d'épargne-retraite plus souple, dans les entreprises où les revenus et les dépenses fluctuent. Cependant, la plupart des nouvelles entreprises ne pourront habituellement envisager le parrainage d'un régime de retraite tant qu'elles ne se seront pas dotées d'assises financières sûres.

Il existe aussi divers facteurs qui influent sur l'intérêt des employés et leur participation aux régimes d'employeurs. À titre d'exemple, l'âge joue peut-être un rôle sur l'importance que la personne accorde à la participation aux régimes de retraite professionnels ou autres programmes d'épargne-retraite. Les travailleurs plus jeunes ou à salaire moins élevé ont peut-être des priorités d'épargne et de dépense plus immédiates que les travailleurs plus âgés ou mieux rémunérés. Il ne faut pas s'étonner que, pour nombre de jeunes travailleurs, les coûts inhérents à l'achat d'une maison ou à l'établissement de la famille prennent le pas sur l'épargne-retraite.

Certains groupes d'employés à plein temps, à faible revenu ou à temps partiel, ont toujours été coupés des régimes professionnels en raison de restrictions au niveau du revenu ou de l'admissibilité. Par le passé, nombre d'employeurs ont décidé d'exiger que les employés travaillent pour l'entreprise pendant une longue période avant d'être admissibles au régime de retraite. Ce facteur, combiné aux dispositions d'acquisition «âge et années de service», a freiné les niveaux d'adhésion, notamment chez les travailleurs mobiles. D'autres avantages professionnels, par exemple les mécanismes de partage des bénéfices, l'assurance-vie ou maladie supplémentaire, peuvent aussi avoir la priorité sur les rentes, chez certains employeurs ou employés.

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1 Statistique Canada, Régimes de pensions au Canada, 1986

2 Respectivement de 1 à 99 employés et de 100 à 499 employés

Ontario Employment Pension Coverage

As of January 1, 1987, 1.9 million Ontario employees, or 38% of the total Ontario labour force and 45% of employed paid workers were members of employment pension plans. Although pension membership increased steadily during the previous decade, the relative levels of pension coverage have decreased slightly during the same period. The Table in **Appendix C** compares the growth of employment pension membership relative to the growth in the labour force from 1977 to 1987. The slight decline in the coverage rate is largely attributable to the unprecedented growth of the Ontario labour force as a result of greater participation by women and an increase in migration from other parts of the country. Evidence of this trend is reflected in the fact that Ontario's aggregate labour market participation rate increased from 66.7 per cent in 1980 to 69.6 per cent in 1988, the highest rate in the province's history.[6]

Pension Coverage and the Pension Benefits Act, 1987

The Pension Benefits Act, 1987 introduced a number of reforms which will improve employment pension coverage for Ontario employees and their families. Under the new Act, the maximum period that employees can now be required to work before becoming eligible to join their employer-sponsored pension plan is two years. Prior to this reform, it was common for many companies to require a longer eligibility period for new employees before qualifying for plan membership. The new Act also provides statutory eligibility rights for part-time workers. Where a pension plan exists for full-time employees, part-time workers in the same company who have earned a minimum of 35% of the Canada Pension Plan's Year's Maximum Pensionable Earnings (YMPE),[7] or who have worked 700 hours in each of the previous two years, must be allowed to join the same or an equivalent plan. Enhanced portability rights and two-year vesting under the new Act will make it easier for mobile workers to join and remain in employment pension plans. These will also assist female employees, who may have interrupted working patterns due to child-care responsibilities, to preserve their pension membership status. New requirements for the provision of pre-retirement and post-retirement survivor benefits will also facilitate more employment pension benefits being delivered to the spouses and beneficiaries of plan members.

While it is too early to measure the effect that these Pension Benefits Act, 1987 reforms will have on employment pension coverage levels in Ontario, it is expected that these measures will result in increased employment pension coverage for today's more mobile and flexible work force.

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[6] Statistics Canada, Labour Force Survey, 1988 revised series.

[7] YMPE in 1989 is $27,700; 35% = $9,695.

Adhésions aux régimes professionnels en Ontario

Au 1er janvier 1987, 1,9 million de travailleurs ontariens, soit 38 % de la main-d'oeuvre totale de la province et 45 % des travailleurs salariés faisaient partie de régimes professionnels. Même si le nombre d'adhérents aux régimes a constamment augmenté au cours de la décennie précédente, le taux relatif d'adhésions aux régimes de retraite n'a pas cessé de diminuer pendant la même période. L'**Annexe C** est un tableau comparatif de la croissance des adhésions aux régimes professionnels par rapport à celle de la main-d'oeuvre, de 1977 à 1987. Le léger déclin du taux d'adhésions est en grande partie attribuable à la croissance sans précédent de la main-d'oeuvre ontarienne, par suite d'une présence plus grande des femmes sur le marché du travail et de l'augmentation de l'immigration en provenance d'autres régions du pays. La preuve de cette tendance se retrouve dans le fait que le taux global de participation au marché du travail en Ontario est passé de 66,7 % en 1980 à 69,6 % en 1988, soit le taux le plus élevé de l'histoire de la province.[3]

L'adhésion aux régimes et la loi de 1987 sur les régimes de retraite

La Loi sur les régimes de retraite adoptée en 1987 a introduit un certain nombre de réformes qui favoriseront l'adhésion des employés ontariens et de leurs familles aux régimes professionnels. En vertu de la nouvelle loi, le délai maximal d'attente avant que l'employé ne devienne admissible à un régime professionnel d'employeur est désormais de deux ans. Avant la réforme, nombre d'entreprises imposaient à leurs nouveaux employés un délai d'attente plus long avant de les autoriser à adhérer à leur régime. De plus, la nouvelle loi accorde aux travailleurs à temps partiel le droit d'être admis au régime. S'il existe un régime de retraite pour les employés à plein temps, les travailleurs à temps partiel de la même entreprise qui ont gagné au minimum 35 % du maximum des gains annuels ouvrant droit à pension (MGAP)[4] du Régime de pensions du Canada ou qui ont travaillé 700 heures dans chacune des deux années précédentes doivent être autorisés à se joindre au même régime ou à un régime équivalent. L'amélioration des droits de transférabilité et l'acquisition après deux ans en vertu de la nouvelle loi permettront plus facilement aux travailleurs mobiles d'adhérer à un régime professionnel et d'y demeurer. De plus, les employées, qui ne peuvent pas toujours respecter la règle du service ininterrompu par suite de leurs responsabilités d'élever les enfants, auront moins de difficulté à demeurer dans leur régime. Les nouvelles exigences de constitution de prestations de survivant préretraite et postretraite auront aussi comme résultat que les conjoints et les bénéficiaires des participants pourront plus facilement retirer des prestations des régimes professionnels.

Il est encore trop tôt pour mesurer les effets de ces réformes de la Loi de 1987 sur les régimes de retraite sur les niveaux d'adhésion aux régimes professionnels en Ontario, mais ces mesures devraient aboutir à une hausse de l'adhésion à ces régimes dans la main-d'oeuvre actuelle, où les travailleurs sont de plus en plus mobiles et polyvalents.

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3 Statistique Canada, Enquête sur la main-d'oeuvre, série révisée 1988

4 En 1989, le MGAP est de 27 700 $; 35 % = 9 695 $.

Expansion of Employment Pension Coverage in Ontario

The government is committed to fostering an efficient and flexible voluntary private pension system. Accordingly, it is important to identify barriers that may be discouraging increased participation in pension plans by Ontario employers and employees. The government is seeking input from interested individuals and groups on these problems and appropriate measures to motivate more employers and employees to participate in employment pension plans.

Lack of adequate information and understanding of the employment pension system may prevent increased pension participation among some employers and employees. A high degree of financial sophistication is often required in order to make informed decisions on the choice of retirement income arrangements. Private pension plans involve a complex variety of financial and retirement savings products. Many employers may not be aware of the different types of pension plans available or the role that pension plans play in attracting and maintaining skilled employees. Furthermore, employees may not fully understand the importance of retirement planning and the value of pensions as a component of their benefit package.

Contributing to the general lack of understanding of pensions and pension products are factors limiting the ability of employers and employees to access appropriate pension advisory resources include costs, size of firm and location. There is some indication that the current range of pension products may not be adequate and that the existing distribution system for pensions may be limiting the availability of pension products and services for some employers and employees. Increased RRSP contribution limits may also have a moderating effect on employer and employee interest in expanded employment pension participation over the next decade.

Many employers and employees will not be able to participate in an employment pension plan simply because of cost constraints and competing spending priorities. In addition to the cost of the pension benefit, administrative costs are a factor, particularly for smaller businesses. Although a number of provisions of the Pension Benefits Act, 1987 are expected to increase pension coverage for employees, there have been indications that other requirements under the new Act, combined with the proposed federal tax rules governing pensions, may discourage the start-up of new plans due to increased cost and administrative burden. The government is seeking input on this issue from interested individuals and groups as part of this overall consultative process on pension reform.

Expansion de l'adhésion aux régimes professionnels en Ontario

Le gouvernement veut favoriser un système efficace et souple de régimes privés volontaires. En conséquence, il est important d'identifier les obstacles éventuels à une participation accrue des employeurs et employés ontariens aux régimes de retraite. Le gouvernement veut connaître l'avis des personnes et groupes intéressés sur ces problèmes et sur les meilleurs moyens d'inciter employeurs et employés à participer en plus grand nombre aux régimes de retraite professionnels.

Le manque de renseignements et de connaissances sur le système des régimes professionnels peut être un obstacle à l'accroissement de la participation chez certains employeurs et employés. Il faut souvent des connaissances financières spéciales pour prendre des décisions informées sur le choix des régimes de revenu de retraite. Les régimes privés comportent une gamme vaste et complexe de produits financiers et d'épargne-retraite. Nombre d'employeurs ne savent peut-être pas qu'il existe divers types de régimes de retraite ou quel rôle jouent ces régimes, quand il s'agit d'attirer et de conserver des employés compétents. De plus, il est possible que les employés ne saisissent pas entièrement l'importance de la planification de la retraite et la valeur des régimes de retraite en tant qu'élément de leurs avantages sociaux.

Parmi les causes de ce manque général de connaissance des rentes et des produits de rente se trouvent des facteurs qui limitent la capacité d'accès des employeurs et des employés à des services-conseils adéquats en matière de régimes de retraite, notamment les coûts, la taille de l'entreprise et la situation. D'après certains indices, la gamme actuelle de produits de retraite n'est peut-être pas adéquate et le réseau de distribution en place pourrait bien réduire la disponibilité des produits et services de rentes de retraite pour certains employeurs ou employés. Le relèvement des niveaux de cotisation aux REER pourrait aussi avoir une effet modérateur sur l'intérêt des employeurs et des employés à élargir leur participation à des régimes professionnels, au cours de la prochaine décennie.

De nombreux employeurs et employés ne pourront participer à un régime de retraite professionnel simplement en raison des contraintes de coût et des conflits au niveau des priorités de dépenses. En plus du coût des prestations de retraite, les frais d'administration sont un facteur à ne pas négliger, notamment dans les petites entreprises. Un certain nombre de dispositions de la nouvelle Loi sur les régimes de retraite devraient augmenter l'adhésion des employés aux régimes, mais d'après certains indices, d'autres exigences de la nouvelle loi, combinées aux règles fiscales que projette d'adopter le fédéral en matière de rentes, pourraient empêcher le lancement de nouveaux régimes, en raison d'une hausse des coûts et du fardeau administratif. Le gouvernement souhaite obtenir sur cette question l'avis des personnes et groupes intéressés, dans le cadre du mécanisme global de consultation sur la réforme des régimes de retraite.

Proposed Strategy

The government will be conducting market research and consulting with interested parties to identify potential barriers to employment pension coverage to expand coverage where opportunities exist. It is recognized that the factors affecting employment pension participation are complex and involve a community of interests that includes employers, employees, unions, professionals, pension consultants, financial institutions and government.

The strategy adopted by the Ontario government at this time will focus on expanding the potential for employment pension participation by Ontario employers and employees on a voluntary basis. Expanding pension coverage for all employees by mandating employment pensions is not being considered at this time. There is also the issue of expanding the Canada Pension Plan. Ontario is committed to a flexible employment system and to the sharing retirement income responsibility by individuals, employers and government. It is recognized that expanded mandatory pension coverage would have significant cost implications for employers and employees and would reduce individual choice. However, if significant public support emerges in favour of expanding the Canada Pension Plan as an alternative to broader employment pension coverage, the government would be willing to raise this issue with the other provinces and the federal government for review. In the past concerns have been expressed about the impact of CPP expansion on contribution rates, the equitable sharing of pension costs across generations, and the investment of CPP funds. These concerns would have to be addressed in considering such a proposal.

At this time the government's objective is to encourage expanded pension coverage where it will be most feasible and acceptable on a voluntary basis. The focus will be to identify potential target groups for the purpose of developing appropriate mechanisms to encourage greater pension coverage.

Stratégie préconisée

Le gouvernement fera des recherches de marché et consultera les parties intéressées afin d'identifier les obstacles potentiels et d'augmenter si possible l'adhésion aux régimes professionnels. Il est évident que les facteurs qui influent sur la participation aux régimes professionnels sont complexes et touchent divers groupes d'intérêt, à savoir les employeurs, les employés, les syndicats, les professionnels, les conseillers en régimes de retraite, les institutions financières et le gouvernement.

La stratégie adoptée par le gouvernement de l'Ontario visera d'abord à élargir, sur une base volontaire, les possibilités de participation des employeurs et employés ontariens aux régimes professionnels. Pour le moment, il n'est pas question de rendre les régimes professionnels obligatoires pour offrir à tous les employés la possibilité d'adhérer à un régime de retraite.

Autre facteur : l'élargissement du Régime de pensions du Canada. La province préconise un système souple de régimes de retraite professionnels et le partage des responsabilités par les citoyens, les employeurs et le gouvernement, en matière de revenu de retraite. Il est évident que l'adhésion obligatoire aux régimes entraînerait des coûts appréciables, tant pour les employeurs que pour les employés et limiterait les choix personnels. Cependant, si une partie importante de la population favorisait l'élargissement du Régime de pensions du Canada, au lieu de l'augmentation du nombre d'adhérents, le gouvernement serait prêt à en débattre avec les autres provinces et le fédéral. Certains ont déjà exprimé des réserves sur les effets de l'élargissement du RPC sur les taux de cotisation, le partage équitable des coûts entre les générations, ainsi que l'investissement des fonds du RPC. Ce sont des points qu'il faudrait approfondir, dans l'étude d'un projet de cette envergure.

Pour le moment, l'objectif du gouvernement est de favoriser, sur une base volontaire, l'augmentation du nombre d'adhérents aux régimes, dans les secteurs où ce sera plus facilement réalisable et acceptable. Il s'agira d'identifier les groupes cibles potentiels pour la mise au point de mécanismes appropriés visant à favoriser une plus large adhésion.

V. PROPOSALS FOR LEGISLATION

1. The Commitment to Inflation Protection

It has long been recognized that a fixed pension benefit which may be adequate on retirement loses its "purchasing power" over time through the impact of inflation. The experience of rapidly escalating inflation during the 1970s and early 1980s brought this issue to the forefront. During the period from 1970 to 1988, prices increased by an average of 7.4 per cent annually, and the real value of a pension payable in 1970 declined by 72 per cent. Even at low rates of inflation, the value of a fixed pension will decline significantly. Appendix D demonstrates the impact that this can have over an extended period.

The Ontario government has made a commitment to reduce the uncertainty in employment pension income by mandating the indexing of pensions through legislation rather than relying on traditional ad hoc increases provided by employers. Ad hoc increases, while beneficial, are nonetheless uncertain.

The Ontario government's commitment to inflation protection of employment pension plans is contained in section 54 of the Pension Benefits Act, 1987. However, the government also recognizes that the inflation protection formula and implementation procedures should reflect a balance between the need for predictable and affordable pension costs on the part of employers and the need for a degree of certainty of the buying power of their pension benefits in the future on the part of employees.

On December 9, 1986, a Task Force on Inflation Protection for Employment Pension Plans was appointed by the government to recommend an appropriate formula and implementation procedures for indexing. The members of the Task Force were Martin Friedland, Professor of Law at the University of Toronto and designated Chairman of the Task Force; Sydney Jackson, Chairman of the Manufacturers Life Insurance Company; and Clifford Pilkey, immediate past President of the Ontario Federation of Labour.

The Friedland Task Force on Inflation Protection reported in January 1988 with 28 specific recommendations which formed the basis for government consultation with business, labour and professional groups. The terms of reference and recommendations of the Task Force are reproduced in Appendices E and F.

The government's proposals for the implementation of inflation protection are set out below for public comment. These proposals follow closely on the Task Force recommendations.

V. PROPOSITIONS LÉGISLATIVES

1. Engagement envers la protection contre l'inflation

On sait depuis longtemps qu'une prestation de retraite fixe, même si elle est adéquate au départ à la retraite, perd son «pouvoir d'achat» au fil du temps, à cause de l'inflation. L'inflation galopante des années 1970 et du début des années 1980 a mis le problème au premier plan. De 1970 à 1988, les prix ont augmenté en moyenne de 7,4 % par an, de sorte qu'une rente versable en 1970 a perdu dans cette période 72 % de sa valeur réelle. Même si le taux d'inflation est faible, la valeur d'une rente fixe diminuera considérablement. L'Annexe D illustre l'effet que cela peut avoir à long terme.

Le gouvernement de l'Ontario s'est engagé à réduire l'incertitude touchant le revenu des rentes professionnelles en rendant l'indexation des rentes obligatoire, par une mesure législative, au lieu de compter sur les revalorisations ponctuelles traditionnellement offertes par les employeurs. Bien que bénéfiques, les revalorisations ponctuelles n'en sont pas moins incertaines.

Le gouvernement de l'Ontario a formulé son engagement envers la protection-inflation des régimes professionnels dans l'article 54 de la Loi de 1987 sur les régimes de retraite. Par contre, le gouvernement reconnaît que la formule de protection contre l'inflation et les modalités de mise en application doivent traduire un équilibre entre les besoins des employeurs, c'est-à-dire des coûts prévisibles et raisonnables, et ceux des participants au régime, qui veulent connaître avec une certaine certitude le pouvoir d'achat que leur conféreront leurs prestations de retraite.

Le 9 décembre 1986, le gouvernement créait un Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation et lui confiait la tâche de lui remettre des recommandations sur la formule appropriée et les modalités de mise en application de l'indexation. Voici quelle était la composition du Groupe d'étude : Martin Friedland, professeur de droit à l'Université de Toronto et président désigné, Sydney Jackson, président de la Compagnie d'Assurance-Vie Manufacturers, ainsi que Clifford Pilkey, président sortant de la Fédération du travail de l'Ontario.

Le Groupe d'étude a remis, en janvier 1988, un rapport assorti de 28 recommandations précises, qui ont été les fondements du mécanisme de consultation lancé par le gouvernement auprès du monde des affaires, des spécialistes et des syndicats. Le mandat et les recommandations du Groupe d'étude figurent aux Annexes E et F.

Les propositions gouvernementales de mise en application de la protection-inflation qui figurent ci-après sont diffusées à des fins de consultation publique. Ces propositions suivent étroitement les recommandations du Groupe d'étude.

Extent Of Indexing in Private Employment Pension Plans

The majority of employment pension plans do not contain provisions for automatic indexing. While negotiation of inflation protection for unionized employees has increased in the late 1980's, automatic indexation is an exception rather than a rule. Overall, only 7% of Ontario members of private sector employment pension plans were protected by automatic indexing in 1987.

This low level of automatic indexation is offset in part by the decision of many plan sponsors to voluntarily raise the level of the pension benefits being paid to their retirees. The Friedland Task Force noted the commonly held belief that ad hoc pension increases compensate on average for about 40% of inflation (for those retirees who are granted such increases). Even if this view accurately reflects the practice of plan sponsors, ad hoc increases lack the certainty of contractual or mandated pension indexing.

Indexing Of Government Retirement Income Programs

The indexing of employment pension plans can be viewed as a natural progression from the indexation of government retirement income programs. Old Age Security (OAS) benefits, Guaranteed Income Supplement (GIS) benefits and Spouse's Allowance (SPA) are each fully indexed to Consumer Price Index (CPI) increases. Benefits paid by the Canada Pension Plan (CPP), which differs from the other programs in that it is related to employment earnings and financed through premium contributions, are also fully indexed to increases in the CPI.

Inflation Protection - A North American First

In fulfilling its commitment to indexed pensions, Ontario will be the first jurisdiction in North America to implement a general requirement of mandatory inflation protection of employment pension benefits. In assessing specific proposals, the government has considered both the needs of employees for an assured future and the cost to plan sponsors of indexing pension benefits. In light of the innovative nature of the policy, Ontario is dedicated to ensuring that pension indexing represents a responsible and workable approach. Accordingly, public input is invited on the overall indexing approach, the detailed mechanisms outlined below and the proposed legislative language.

Portée de l'indexation : régimes professionnels privés

Pour la plupart, les régimes professionnels ne comportent pas de disposition d'indexation automatique. Bien que la négociation de la protection-inflation des employés syndiqués soit devenue plus courante à la fin des années 1980, l'indexation automatique est plutôt l'exception que la règle. Dans l'ensemble de l'Ontario, 7 % seulement des participants aux régimes professionnels privés étaient, en 1987, protégés par un mécanisme d'indexation automatique.

La rareté de l'indexation automatique est en partie compensée par la décision de nombre de promoteurs de relever volontairement le niveau des prestations de retraite servies à leurs retraités. On croit généralement, comme le mentionnait le Groupe d'étude Friedland, que les augmentations ponctuelles compensent en moyenne environ 40 % de l'inflation (pour les retraités qui en bénéficient). Même si c'était exact, les revalorisations ponctuelles ne sont pas aussi certaines que l'indexation contractuelle ou prescrite par la loi.

Indexation des régimes gouvernementaux de revenu de retraite

L'indexation des régimes de retraite professionnels peut être perçue comme une progression naturelle dérivée de l'indexation des programmes gouvernementaux de revenu de retraite. Les prestations du Programme de sécurité de la vieillesse (PSV) et du Supplément de revenu garanti (SRG), ainsi que les Allocations au conjoint (AC), sont toutes entièrement indexées à l'Indice des prix à la consommation (IPC). Les prestations versées par le Régime de pensions du Canada (RPC), qui diffère des autres programmes parce qu'il est fondé sur les gains et financé par les cotisations, sont elles aussi entièrement indexées aux augmentations de l'IPC.

Protection contre l'inflation : une première en Amérique du Nord

En donnant suite à son engagement d'indexer les rentes, l'Ontario sera la première compétence en Amérique du Nord à introduire l'application générale de la protection-inflation obligatoire des prestations des régimes professionnels. Dans l'évaluation des propositions précises, le gouvernement a analysé à la fois les besoins des employés d'assurer leur avenir, et le coût, pour les promoteurs, d'indexer les prestations. Cette orientation politique est, il faut le reconnaître, assez innovatrice. Voilà pourquoi l'Ontario veut s'assurer que l'indexation des rentes se fasse de façon responsable et pratique. En conséquence, la population est invitée à faire connaître son point de vue sur la stratégie globale d'indexation, les mécanismes détaillés ci-après et la formulation législative envisagée.

General Approach

The major elements of the proposed pension indexing framework can be briefly summarized.

Inflation protection will be mandatory with respect to defined benefit plans, on a prospective basis only. Pension benefits earned after the effective date of the legislation will be required to be indexed. A number of mechanisms are proposed in order to ensure that the costs and risks of inflation are equitably shared between plan members and sponsors. These mechanisms include the specific indexing formula and limits on the benefits covered and on levels of inflation recognized in any one year. It is recognized that flexibility for both employers and employees is important. The proposed approach would allow plan sponsors to offer alternative indexing formulas which are actuarially better than the minimum standard. For members of defined contribution plans and multiple employer pension plans (which are of a defined contribution design), indexing will not be mandatory, but employers will be required to offer the employee the option of an indexed annuity on retirement (or an unindexed annuity with an equivalent actuarial value).

Prospective indexing of pensions for pre-retirement terminations (deferred pensions) will also be mandatory. This proposal recognizes the reality of the inflationary losses which are incurred by terminating plan members from the time of termination to the date of retirement. Indexing deferred pensions will benefit a large number of pension plan members since, in today's highly mobile society, the average employee will work for six or more different employers during his or her working life. It would be undesirable to restrict the real benefit of inflation protection solely to long-service employees of single employers.

Retroactive pension indexing will not be mandatory, but will be encouraged through a series of inducements. These inducements are aimed at providing voluntary inflation protection to existing employees and retirees in respect of benefits that have been accrued prior to the effective date of the legislation. Proposed retroactivity inducements will include conditional use of pension plan surpluses for retroactivity, a graduated phasing in of the indexing formula, and the funding of liabilities associated with retroactive benefits over an extended period. Contribution holidays will continue to be permitted but are subject to stringent funding requirements and Revenue Canada rules.

Prospective Inflation Protection

Pension indexing will be mandatory on a prospective basis for defined benefit pension plans. Defined benefit plans cover more than 4 of every 5 pension plan members in Ontario (see **Appendix G**). Pension benefits earned after the effective date of the legislation will be affected by the mandatory indexing requirement. This proposal ensures that employees who currently belong to defined pension plans will have indexing on the portion of their pension benefits earned in the future.

Stratégie générale

Les grands éléments du cadre préconisé d'indexation des régimes de retraite se résument en quelques mots.

La protection contre l'inflation sera obligatoire dans les régimes à prestations déterminées, uniquement sur une base prospective. On sera tenu d'indexer les prestations acquises après l'entrée en vigueur de la loi. Nous envisageons un certain nombre de mécanismes pour faire en sorte que les coûts et les risques de l'inflation soient partagés équitablement entre les promoteurs et les participants. Ces mécanismes englobent la formule précise d'indexation et les limites des prestations touchées et des taux d'inflation reconnus pour une année donnée. Évidemment, la souplesse est importante, tant pour les employeurs que pour les employés. La stratégie proposée permettrait aux promoteurs d'offrir d'autres formules d'indexation actuariellement meilleures que la norme minimale. Dans le cas des participants des régimes à cotisation déterminée et des régimes multi-employeurs (qui sont en fait des régimes à cotisations déterminées), l'indexation ne sera pas obligatoire, mais les employeurs seront tenus d'offrir à l'employé le choix d'une rente indexée, au départ à la retraite (ou d'une rente non indexée à valeur actuarielle équivalente.)

L'indexation prospective des rentes en cas de cessation d'emploi avant la retraite (rente différée) sera aussi obligatoire. Cette proposition reconnaît comme réelles les pertes inflationnistes subies par ces personnes, de la cessation d'emploi à la date de la retraite. L'indexation des rentes différées avantagera un grand nombre de participants car, dans notre société, la mobilité accrue de la main-d'oeuvre fait que l'employé type travaillera pour six employeurs différents ou davantage pendant sa vie active. Il ne serait pas équitable de réserver les véritables avantages de la protection contre l'inflation aux employés à longs états de service et qui n'ont eu qu'un employeur

L'indexation rétroactive ne sera pas obligatoire mais sera favorisée par une série de mesures incitatives visant à offrir une protection-inflation volontaire aux employés actifs et aux retraités, à l'égard des prestations constituées avant l'entrée en vigueur de la loi. Parmi les mesures envisagées à cet égard, mentionnons l'utilisation conditionnelle des excédents des régimes pour la rétroactivité, l'introduction progressive de la formule d'indexation, ainsi que le provisionnement, sur une période plus longue, des charges associées aux prestations rétroactives. Les congés de cotisation demeureront autorisés, sous réserve de normes strictes de financement et des règles de Revenu Canada.

Protection prospective contre l'inflation

L'indexation des rentes sera obligatoire sur une base prospective pour les régimes à prestations déterminées. Les régimes à prestations déterminées regroupent plus de quatre sur cinq des participants aux régimes en Ontario (voir Annexe G). Les prestations de retraite acquises après l'entrée en vigueur de la loi seront touchées par la règle de l'indexation obligatoire. Cette proposition vise à faire en sorte que les employés qui participent actuellement à des régimes à prestations déterminées puissent bénéficier de l'indexation de la partie des prestations qui reste à acquérir.

The level of indexing will be based on the Consumer Price Index (CPI), using the formula proposed by the Friedland Task Force of (75% of CPI) - 1%, which is to be applied on an annual basis.

This formula ensures that only the first percentage point of inflation is wholly borne by plan members, but further increases are shared on a 75% to 25% basis by the pension plan and by the pension recipient. The CPI formula is a well-known and commonly accepted measure of changes in the cost of living.

The eligible pension benefits to which the indexing formula would apply on a mandatory basis are basic, lifetime benefits earned after the date on which the legislation becomes effective. Indexing of early retirement "bridging" benefits and most other ancillary benefits will not be part of the minimum standard. The indexing adjustment will take place at least once a year. The resulting basic standard of inflation protection will substantially reduce, although not fully eliminate the erosion of employment pension benefits associated with inflation.

There are a number of operational mechanisms which are proposed as a means of limiting uncertainty to employers, while still ensuring adequate protection of pension benefits against inflation.

The maximum level of inflation which will be taken into account in any one year will be 8%, with any excess carried forward to future years.

While providing a significant level of protection to plan members, a maximum provides some degree of certainty for employers. By imposing the indexing formula on the 8% maximum, mandatory pension increases available to plan members in a single year to compensate for inflation would be effectively capped at 5%. A proposed "roll-over" of inflation over 8% to future years of inflation would ensure that inflationary gains are carried forward, and therefore realized by members over time. Similarly, if negative inflation were to occur, it would be taken into account to reduce future increases. The proposed 8% maximum compares with a 10% cap proposed by the Friedland Task Force. During the last 25 years, inflation has exceeded 8% in seven years and has exceeded 10% in only five years. As a result, it is anticipated that setting the maximum at 8% will increase certainty and cost containment for plan sponsors without having a significant impact on benefits for pensioners.

The amount of a pension to be protected from inflation on a mandatory basis will be limited to 60% of the "Year's Maximum Pensionable Earnings" (YMPE).

The YMPE increases each year based on the national average wage index. In 1989, YMPE is $27,700, and sets the maximum earnings level upon which a participant can make contributions to fund his or her future CPP benefits. Sixty percent of the YMPE is equivalent to $16,620. This provision will limit the level of benefits afforded inflation protection on a mandatory basis and thereby reduce potential costs to employers. It can be argued that CPP and OAS benefits, which are fully indexed to inflation, compensate for the remaining 40% of YMPE. On a voluntary basis, employers would be able to index benefits above the minimum level.

Le niveau d'indexation se fondera sur l'Indice des prix à la consommation (IPC) d'après la formule proposée par le Groupe d'étude Friedland, c'est-à-dire (75 % de l'IPC) - 1 %, appliquée sur une base annuelle.

Ainsi, seul le premier point de pourcentage d'inflation est entièrement assumé par les participants, tandis que les hausses subséquentes sont partagées par le régime et les prestataires à raison de 75 % et de 25 % respectivement. La formule fondée sur l'IPC est une mesure bien connue et généralement acceptée, en matière de changement du coût de la vie.

Les prestations admissibles auxquelles s'appliquera obligatoirement la formule d'indexation sont les prestations de base, à vie, acquises après l'entrée en vigueur des mesures législatives. L'indexation des prestations de transition pour retraite anticipée et de la plupart des autres prestations accessoires ne fera pas partie de la norme minimale. L'indexation sera au moins annuelle. La norme minimale de protection-inflation qui en résultera réduira de façon appréciable, mais sans l'éliminer entièrement, l'érosion des prestations des régimes professionnels due à l'inflation.

Nous envisageons un certain nombre de mécanismes opérationnels pour réduire l'incertitude des employeurs, tout en garantissant quand même une protection adéquate des prestations de retraite contre l'inflation.

Le niveau maximal d'inflation dont il sera tenu compte dans une année donnée sera de 8 % et tout excédent sera reporté sur les années ultérieures.

Tout en offrant un niveau appréciable de protection aux participants, ce maximum offre un certain degré de certitude aux employeurs. En imposant un maximum de 8 % à la formule d'indexation, les hausses annuelles obligatoires que pourraient recevoir les participants pour compenser l'inflation seraient en fait plafonnées à 5 %. La proposition de reporter sur les années ultérieures la partie de l'inflation dépassant 8 % garantirait le report des gains d'inflation, de sorte que les membres pourraient réaliser ces gains avec le temps. De même, si l'inflation était négative, il en serait tenu compte pour réduire les hausses futures. Le maximum proposé se compare au plafond de 10 % avancé par le Groupe d'étude Friedland. Depuis 25 ans, le taux annuel d'inflation a dépassé 8 % à sept reprises, mais n'est allé au-delà de 10 % que cinq fois. Le gouvernement estime donc que fixer le maximum à 8 % offrira aux promoteurs des régimes plus de certitude et un meilleur contrôle des coûts, sans avoir trop d'effet sur les prestations des retraités.

Le montant de la rente à protéger obligatoirement de l'inflation sera limité à 60 % du maximum des gains annuels ouvrant droit à pension (MGAP).

Le MGAP est relevé annuellement en fonction de l'indice national de la moyenne des salaires. En 1989, le MGAP est de 27 700 $, ce qui fixe le maximum des gains d'après lesquels le participant peut cotiser pour financer ses prestations futures du RPC. Précisons que 60 % du MGAP équivaut à 16 620 $. Cette disposition imposera une limite au niveau des prestations à protéger obligatoirement de l'inflation et réduira les coûts éventuels des employeurs. On peut supposer que les prestations RPC et PSV, qui sont entièrement indexées à l'inflation, compensent les 40 % restants du MGAP. Sur une base volontaire, les employeurs pourraient indexer les prestations au-delà du niveau minimum.

In order to limit indexing expenses to employers associated with extremely early retirements, it is proposed that adjustments for inflation protection only be required to begin at the later of actual retirement or within 5 years prior to the pension plan's "normal retirement age".

The Task Force on Inflation Protection had recommended that indexing begin at the later of age 55 or the age of actual retirement. The choice of an actual age, however, could potentially contravene the Canadian Charter of Rights and Freedoms. In order to comply with the Charter it is preferable to set the date in relation to the "Normal Retirement Age" set out in a pension plan. Since most plans have a normal retirement age of 65, this means in most cases indexing can begin at age 60, which is also when Canada Pension Plan payments can begin.

Alternative indexing formulas which offer actuarially better inflation protection than the minimum standard formula of (75% of CPI) - 1% will be acceptable.

The government is committed to facilitating the provision of indexed benefits through the use of a flexible approach. The Pension Commission of Ontario will determine in individual cases whether an alternative formula is in fact actuarially better. If both parties and an independent actuarial report agree that a formula proposed by the parties is more generous than the minimum standard, then there is a strong possibility that the formula will be acceptable. If, however, there is no agreement and/or no independent actuarial report certifying that a formula exceeds the minimum standard, then it will be less certain that the PCO will regard it as acceptable under the requirements of the Act. The Pension Commission will provide guidelines to assist pension plan sponsors and negotiators on this question.

The effective date of the indexing legislation will be established in the future to permit plan sponsors to adjust plan documents and administrative systems and to take indexing costs into account in collective bargaining.

The exact date will depend on when the legislation is passed. An appropriate lead-in time, for example, two years between the date indexing legislation is introduced and its effective date is suggested to permit plan sponsors to take indexing and surplus into account in determining and negotiating total compensation for employees. This will help to offset the short-term cost impact of mandatory indexing for employers and will give all parties sufficient time to prepare for the new system.

Inflation protection implementation will commence at the end of any collective agreement which is in force on the date of implementation of the indexing legislation. Inflation protection will then be retroactive to the date of legislative implementation. Any inflation protection already provided under the collective agreement after the date of implementation will be taken into account.

Dans le but de réduire les frais d'indexation des employeurs, en cas de retraite très anticipée, les ajustements de protection contre l'inflation ne devraient commencer qu'à la retraite proprement dite ou dans les cinq ans précédant l'«âge normal de la retraite» précisé au régime, à l'éventualité la plus tardive.

Le Groupe d'étude avait recommandé la mise en place de l'indexation à 55 ans ou au départ à la retraite, à l'éventualité la plus tardive. Cependant, le choix d'un âge fixe pourrait être contraire à la Charte des droits et libertés. Pour respecter la Charte, il est préférable de fixer une date par rapport à l'âge normal de la retraite précisé dans le régime visé. Puisque, dans la plupart des régimes, l'âge normal de la retraite est de 65 ans, cela signifie que, plus souvent qu'autrement, l'indexation pourra commencer à 60 ans, soit l'âge où peuvent être versées les prestations du Régime de pensions du Canada.

D'autres formules d'indexation offrant une protection-inflation actuariellement meilleure que la formule normalisée minimale de (75 % de l'IPC) - 1 % seront acceptables.

Le gouvernement souhaite, par une démarche souple, faciliter l'indexation des prestations. C'est à la Commission des régimes de retraite de l'Ontario qu'il appartiendra de déterminer, dans les cas particuliers, si une formule de remplacement est en fait actuariellement meilleure. Si les deux parties et le rapport d'un actuaire indépendant concluent que telle formule préconisée est plus généreuse que la norme minimale, il est fort possible que cette formule soit acceptable. Cependant, en l'absence d'accord ou de rapport d'un actuaire indépendant attestant que telle formule dépasse la norme minimale, il n'est pas certain que la CRRO l'acceptera comme répondant aux exigences de la Loi. La Commission des régimes de retraite établira des lignes directrices afin d'aider les promoteurs et les négociateurs sur cette question.

La date d'entrée en vigueur de la mesure législative d'indexation sera fixée de façon à permettre aux promoteurs d'adapter les documents et les systèmes administratifs du régime et de tenir compte des coûts d'indexation dans la négociation collective.

La date exacte dépendra du moment où la loi sera adoptée. Nous préconisons un délai approprié, par exemple deux ans, entre la date d'introduction de la mesure législative d'indexation et sa date d'entrée en vigueur, pour permettre aux promoteurs de tenir compte de l'indexation et de l'excédent dans l'établissement et la négociation du régime total d'indemnisation des employés. Cela compensera en partie les coûts de l'employeur à court terme, à l'égard de l'indexation obligatoire, tout en donnant aux parties un délai suffisant pour se préparer au nouveau régime.

La protection contre l'inflation sera mise en application à la fin de toute négociation collective en vigueur à la date de mise en oeuvre de la mesure législative d'indexation. Par la suite, la protection-inflation sera rétroactive à la date de mise en application de la loi. Il sera tenu compte de toute protection contre l'inflation offerte en vertu de la convention collective après la date de mise en application.

Inflation Protection Of Deferred Pensions

Given that the majority of employees do not stay with a single employer throughout their career or pension plan membership, it is proposed that deferred pensions be indexed on a prospective basis.

Deferred pensions are pensions of employees who terminate employment with the plan sponsor on a pre-retirement basis. Under the new Act, deferred pension benefits may be vested with the sponsor, or transferred to another plan or to a locked-in RRSP or annuity. Indexing a deferred pension would require that the commuted value of the deferred pension include an assumption of indexing during the pre-retirement period. The Task Force on Inflation Protection recommended that deferred pensions be indexed.

If a deferred pension is not indexed, the pension benefit of a terminating plan member is eroded by inflation not only after retirement, but also during the deferment period. For example, someone leaving a job at age 35, with an entitlement to a deferred pension, will bear the impact of inflation on that deferred pension for 30 years before retirement, if the normal retirement age set out in the plan is age 65.

As the average employee will work for six or more employers during his or her career, a decision not to index deferreds would deprive most employees of the value of indexing of benefits earned in all except the very last job held prior to retirement. Moreover, if deferred pensions are not indexed, the impact on mobile employees would, in combination with other factors, serve to disadvantage deferreds in comparison to long-service employees.

For employers, however, the costs of indexing deferred pensions can be considerable, varying with the general benefit level, plan type and labour turnover rate. It is estimated that the cost of indexing deferred pensions will represent a major portion of the total cost to employers of prospective indexing. In three of the sample plans reviewed by the Friedland Task Force, the costs of indexing deferreds ranged from roughly one-quarter to more than one-half of the total cost of complying with the prospective indexing recommendations. There is no easy reconciliation of these cost impacts for employees and plan sponsors.

Consistent with the proposal for indexing post-retirement benefits, indexing of deferreds will be mandatory only for defined benefit plans, and actuarially better indexing formulas can be used to index deferred pensions.

In addition, it is proposed that the Pension Benefits Act, 1987 requirement that plan sponsors fund at least 50% of an employee's pension continue to apply to deferred pensions.

This will prevent a situation where an employee's short-service deferred pension could be entirely financed from the plan member's own contributions.

Protection-inflation des rentes différées

Compte tenu que la majorité des employés ne restent pas chez le même employeur pendant toute leur carrière ou leur période d'adhésion à un régime de retraite, les rentes différées devraient être indexées prospectivement.

On appelle rentes différées les rentes des employés qui quittent leur emploi auprès du promoteur sur une base préretraite. En vertu de la nouvelle loi, les prestations différées peuvent être dévolues au promoteur ou transférées dans un autre régime ou encore, dans une rente ou un REER immobilisé. L'indexation d'une rente différée exigerait que la valeur commutée de cette rente comporte une hypothèse d'indexation pendant la période précédant la retraite. Le Groupe d'étude Friedland recommandait l'indexation de ces rentes.

Si la rente différée n'est pas indexée, les prestations de l'ex-participant sont minées par l'inflation, non seulement après la retraite, mais également pendant la période de report. À titre d'exemple, une personne quittant son emploi à 35 ans et ayant droit à une rente différée devra assumer l'effet de l'inflation sur cette rente différée pendant 30 ans avant sa retraite, si l'âge normal de la retraite fixé au régime est de 65 ans.

Normalement, un travailleur aura, pendant sa vie active, six employeurs ou davantage; la décision de ne pas indexer les rentes différées priverait la plupart des employés de la valeur d'indexation des prestations acquises dans tous leurs emplois, sauf le dernier précédant la retraite. De plus, si les rentes différées ne sont pas indexées, ce sera un effet de plus désavantageant les titulaires de rentes différées, comparativement aux employés à longs états de service.

Cependant, pour les employeurs, le coût d'indexation des rentes différées peut être considérable et variera selon le niveau général des prestations, le type de régime et le taux de roulement de la main-d'oeuvre. On estime que le coût d'indexation des rentes différées représentera une large part du coût total de l'indexation prospective. Dans trois des régimes types examinés par le Groupe d'étude Friedland, le coût d'indexation des rentes différées variait d'environ 25 % à plus de 50 % du coût total que devraient assumer les promoteurs pour se conformer aux recommandations touchant l'indexation prospective. Il n'existe pas de solution magique pour amoindrir l'effet de ces coûts sur les employés et les promoteurs des régimes.

Conformément à la proposition relative à l'indexation des prestations post-retraite, il ne sera obligatoire d'indexer les rentes différées que dans les régimes à prestations déterminées; de plus, on pourra utiliser à cette fin des formules d'indexation actuariellement meilleures.

En outre, l'exigence de la Loi sur les régimes de retraite (1987) selon laquelle les promoteurs doivent financer au moins 50 % de la rente de l'employé devrait continuer à s'appliquer aux titulaires de rentes différées.

Cela permettra d'éviter les cas où le participant au régime aurait à provisionner entièrement à même ses propres contributions la rente différée d'un employé ayant peu d'années de service.

It is also proposed that deferred pensions of less than one-tenth of the Canada Pension Plan's Year's Maximum Pensionable Earnings at the time of termination remain in the plan only with the plan sponsor's consent.

This will minimize the administrative burden associated with small deferred pensions by permitting plan sponsors to require small deferred pensions to be transferred out (to a locked-in RRSP or other vehicle), so that these small pensions do not have to be kept on the pension plan books indefinitely. The Task Force recommended that the definition of a small pension be set at 10% of the Average Industrial Wage at time of the deferral, but the Canada Pension Plan's Year's Maximum Pensionable Earnings figure is more appropriate to pension legislation. This 10% limit in 1989 would be $2,770.

OPTIONAL INDEXING: DEFINED CONTRIBUTION PLANS AND MULTI-EMPLOYER PENSION PLANS

Based on the recommendations of the Friedland Task Force, it is proposed that sponsors of defined contribution plans be required to offer plan members, on retirement, or option of receiving either an indexed annuity or a fixed annuity, where the two have the same commuted value.

The employer would not be responsible for funding the purchase of an annuity beyond the value of the retiring member's share of the assets in the plan.

There are a number of reasons for treating defined contribution plans differently than defined benefit plans:

- While a defined benefit plan involves a promised benefit, a defined contribution plan promises to purchase an annuity on retirement using the accumulated contributions associated with the retiring member. There is no implied certainty associated with the value of the annuity as this may vary with the state of the market at the time of retirement;

- The impact of inflation on defined benefit plans redistributes income from pensioners to plan sponsors and active plan members. Conversely, with defined contribution plans inflation does not result in redistribution of income to the plan sponsor and active workers since the contribution is set. By definition, there can be no "surplus" in a defined contribution plan. If inflation protection is provided for a member of a defined contribution plan, by definition the pensioner would receive no greater total value, but rather initial payments which are lower than without indexing and expected final payments which are higher.

Nous souhaitons également que les rentes différées inférieures au dixième du maximum des gains annuels ouvrant droit à pension du Régime de pensions du Canada, au moment de la cessation d'emploi, ne puissent demeurer au régime qu'avec le consentement du promoteur.

Cela réduira le fardeau administratif associé aux petites rentes différées, car les promoteurs pourront exiger que les petites rentes différées soient transférées (à un REER ou immobilisé ou à un autre régime), de façon à ne pas avoir à conserver indéfiniment aux livres du régime ces petites rentes. Le Groupe d'étude recommandait de définir comme «petite rente» un montant équivalant à 10 % du salaire moyen dans l'industrie au moment du report, mais le maximum des gains annuels ouvrant droit à pension du Régime de pensions du Canada est une notion plus adéquate pour la Loi sur les régimes de retraite. En 1989, cette limite de 10 % serait de 2 770 $.

INDEXATION FACULTATIVE : RÉGIMES À COTISATIONS DÉTERMINÉES ET RÉGIMES MULTI-EMPLOYEURS

D'après la recommandation du Groupe d'étude Friedland, les promoteurs de régimes à cotisations déterminées devraient être tenus d'offrir à leurs participants, au départ à la retraite, le choix de recevoir une rente indexée ou une rente fixe, si les deux ont la même valeur actualisée.

L'employeur n'aurait pas la responsabilité de financer l'acquisition d'une rente au-delà de la valeur de ce que le participant qui prend sa retraite a investi dans l'actif du régime.

Il existe plusieurs raisons pour ne pas traiter les régimes à cotisations déterminées de la même façon que ceux à prestations déterminées :

- Le régime à prestations déterminées suppose une prestation promise, tandis que celui à cotisations déterminées comporte la promesse d'acquisition d'une rente à la retraite, à l'aide des cotisations accumulées à l'égard du participant qui prend sa retraite. Il n'y a aucune connotation de certitude associée à la valeur de la rente, car elle peut varier selon les conditions du marché au moment de la retraite.

- L'effet de l'inflation sur les régimes à prestations déterminées est de redistribuer le revenu des retraités vers les promoteurs et les participants actifs. À l'inverse, dans les régimes à cotisations déterminées, l'inflation n'entraîne pas de redistribution du revenu au bénéfice du promoteur et des travailleurs actifs, car la cotisation est fixe. Par définition, il ne peut y avoir d'excédent, dans un régime à cotisations déterminées. S'il y avait protection contre l'inflation, dans le cas d'un participant à un régime à cotisations déterminées, le retraité, par définition, n'en retirerait pas plus de valeur, mais plutôt des versements initiaux plus faibles que sans l'indexation, et des versements ultimes plus élevés.

Multi-Employer Pension Plans (MEPPs) have characteristics of both defined benefit and defined contribution plans but are closer to defined contribution plans in that contribution levels, rather than benefit levels, are set in negotiations. Thus it is consistent to treat them in the same way as defined contribution plans (i.e. indexing optional for plan members). This would not include pension plans covered by the proposed new definition of Multi-Unit Pension Plans (MUPPs) (see Section 3, Improved Administration and Enhanced Enforcement and Protection).

Retroactive Inflation Protection

"Retroactive inflation protection" refers to indexing pension benefits which have been earned in the past. This indexing would compensate current retirees and plan members for future inflation but would not provide "catch-up" compensation for the erosion of purchasing power caused by inflation prior to the effective date of the legislation. Mandating such a benefit increase would impose major costs on employers and on active employees, and could discourage the maintenance of employment pension plans by sponsors. However, providing future indexing of benefits earned in the past would result in significant benefit increases to retirees and older plan members who are still in the workforce. This retroactive indexing should therefore be encouraged on a voluntary basis.

It is proposed that plan sponsors be encouraged to provide inflation protection on a retroactive basis through a series of cost containing inducements.

The use of inducements is based firmly on the Friedland Task Force approach to retroactivity.

The logic of the Task Force is worth citing:

> "The most difficult question of all that we have had to deal with is the question of whether the legislation should be prospective only -- that is, should it apply only to pension credits earned in the future? To apply inflation protection retroactively -- or to use a perhaps softer term, retrospectively -- would impose an additional burden on employers who have pension plans, a burden not shared by employers without pension plans. This burden cannot easily be taken into account in future wage negotiations. Moreover, companies with more mature work forces and with more retired workers face a greater burden than employers with younger work forces. This bias gives a decided competitive advantage to employers who are setting up new plans and to foreign competitors. And it gives a very unfair advantage to employers without pension plans. It is also unfair to employers who have already used excess earnings to improve pension plans such as by improving benefits or introducing early retirements. Further, retroactivity does not help retirees for whom the employer has purchased annuities, and of course it does nothing for those without pension plans. We note that the Ontario White Paper of 1984 recommended that inflation protection be prospective only. We are aware of no jurisdiction in North America that provides comprehensive mandatory prospective inflation protection, let alone retroactive inflation protection.

Les régimes multi-employeurs (RRME) possèdent à la fois les caractéristiques des régimes à prestations déterminées et de ceux à cotisations déterminées, mais sont plus près de ces derniers du fait que ce sont les niveaux des cotisations, et non ceux des prestations, qui sont établis par négociation. En conséquence, il est logique de les traiter de la même façon que les régimes à cotisations déterminées (c.-à-d. indexation facultative pour les participants). Cela exclurait les régimes correspondant à la nouvelle définition envisagée, celle des régimes de retraite multi-syndicaux (RRMS). (Voir la section 3, Amélioration de l'administration, de la mise en application et de la protection.)

Protection rétroactive contre l'inflation

La «protection-inflation rétroactive» s'entend de l'indexation des prestations de retraite acquises antérieurement. Cette indexation indemniserait les retraités et les participants actuels, à l'égard de l'inflation future, mais n'offrirait aucun «rattrapage» pour l'érosion du pouvoir d'achat par l'inflation avant la date d'entrée en vigueur de la mesure législative. Si cette revalorisation des prestations devenait obligatoire, elle imposerait des coûts considérables aux employeurs et aux employés actifs et pourrait inciter les promoteurs à se départir de leurs régimes de retraite professionnels. Par contre, l'indexation future des prestations acquises par le passé offrirait une revalorisation appréciable des prestations des retraités et des travailleurs âgés. Il faut donc encourager, sur une base volontaire, cette indexation rétroactive.

Nous préconisons d'encourager les promoteurs à offrir la protection-inflation rétroactive par une série de mesures incitatives propres à réduire les coûts.

Le recours aux mesures incitatives se fonde abondamment sur la façon dont le Groupe d'étude Friedland a abordé la rétroactivité.

Il vaut la peine de citer le raisonnement suivi par le Groupe d'étude :

> «La question la plus difficile que nous ayons eu à traiter est celle de savoir si la législation doit être uniquement prospective, c'est-à-dire si elle ne doit être appliquée qu'aux crédits de rentes qui seront acquis. Si la protection contre l'inflation était rétroactive, ou rétrospective, cela imposerait un fardeau supplémentaire aux employeurs qui ont des régimes de retraite, fardeau que n'auraient pas à subir ceux qui n'ont pas établi de régime. Il n'est pas facile de tenir compte de ce fardeau dans les futures négociations salariales. En outre, les entreprises dont l'effectif est plus âgé et qui ont le plus grand nombre de retraités doivent porter un fardeau plus lourd que les employeurs dont la main-d'oeuvre est encore jeune. Du point de vue de la concurrence, ces facteurs avantagent nettement les employeurs qui implantent de nouvelles usines, ainsi que les concurrents étrangers. En outre, cela donne un avantage injuste aux employeurs qui n'ont pas de régime de retraite et défavorise ceux qui ont déjà utilisé leurs gains excédentaires pour améliorer leurs régimes, par exemple en revalorisant les prestations ou en introduisant la retraite anticipée. De plus, la rétroactivité n'est d'aucune aide aux retraités pour lesquels l'employeur a acheté des rentes et n'est évidemment pas utile à ceux qui n'ont pas de régime de retraite. Le livre blanc publié en 1984 par l'Ontario recommandait que l'indexation ne soit que prospective. À notre connaissance, aucun palier de compétence en Amérique du Nord n'a l'indexation prospective obligatoire globale, et encore moins l'indexation rétroactive.

Nevertheless, it is important that retirees not be forgotten. In many cases they did not obtain improved benefits while they were active workers, and many are not now receiving voluntary increases. Moreover, we are very concerned that compulsory prospective inflation protection may discourage those plan sponsors that are now granting voluntary increases to retired members from continuing to do so."

Surplus-Related Retroactivity Inducements

The most significant inducement proposed is access to pension surpluses. Pension surpluses are pension plan assets in excess of the amount necessary to meet pension plan liabilities. Surpluses arise due to conservative funding assumptions, unexpectedly high investment returns, or reductions in plan liabilities. Inflation can contribute to the accumulation of surplus, particularly if pension benefits are not indexed.

Until recently, most plan sponsors claimed discretion over the use of pension surpluses. Based on this claim they chose to withdraw the surplus, take contribution holidays, or use the surplus funds to provide increased benefits or ad hoc inflation-related increases to retirees.

In December, 1986, a moratorium was placed on surplus withdrawals from ongoing plans and, in February, 1988, based on a Task Force recommendation, restrictions were extended to plans on wind-up. These moratoriums were designed to prevent plan sponsors from withdrawing surpluses in anticipation of a future indexing requirement and also recognized that indexing legislation might in some way link existing surpluses to retroactive inflation protection.

The proposals for the treatment of surpluses are addressed in relation to existing surpluses in ongoing or terminated plans and in respect of the treatment of surpluses in the future.

For ongoing plans, ownership of any surplus generated after January 1, 1987 is based on the provisions of the plan document. If formal retroactivity at (75% of CPI) - 2% is provided, one dollar of pre-January 1, 1987 surplus can be withdrawn for each dollar allocated to funding formal retroactivity. If there is any pre-1987 surplus remaining after retroactivity has been provided, it can also be withdrawn.

Néanmoins, il est important de ne pas oublier les retraités. Bien souvent, ils n'ont pas obtenu de hausse des prestations pendant qu'ils faisaient partie de la main-d'oeuvre active et nombre d'entre eux ne reçoivent maintenant aucune augmentation volontaire. Ce qui nous inquiète, en outre, c'est que la protection-inflation prospective obligatoire pourrait avoir un effet dissuasif sur les promoteurs qui accordent actuellement des augmentations volontaires aux retraités.»

Mesures incitatives liées aux excédents

Parmi les mesures incitatives projetées, en matière d'indexation rétroactive, la plus importante touche l'accès aux excédents des régimes. Ces excédents sont les éléments d'actif du régime de retraite au-delà du montant nécessaire pour répondre aux charges de rentes. Les excédents sont dus à des hypothèses de financement conservatrices, à un rendement de l'investissement plus élevé que prévu ou à une diminution des charges du régime. L'inflation peut contribuer à l'accumulation d'excédents, surtout si les régimes de retraite ne sont pas indexés.

Jusqu'à récemment, la plupart des promoteurs prétendaient pouvoir à leur discrétion disposer de leurs excédents. Ils ont donc décidé de les retirer, de cesser de cotiser pendant un certain temps, d'affecter les excédents à enrichir les prestations ou d'accorder aux retraités des augmentations ponctuelles d'indexation.

En décembre 1986, on a imposé un moratoire au retrait des excédents des régimes en exploitation et, en février 1988, en fonction d'une recommandation du Groupe d'étude, les restrictions ont été élargies aux régimes en liquidation. Ces mesures visaient à empêcher les promoteurs de retirer les excédents en prévision d'une indexation future obligatoire et rendaient compte du fait que la mesure législative d'indexation pourrait, d'une certaine façon, lier les excédents actuels à la protection rétroactive contre l'inflation.

Les projets d'amendements qui suivent touchent les excédents actuels des régimes exploités ou liquidés et les excédents futurs.

Dans les régimes exploités, la propriété des excédents obtenus après le 1er janvier 1987 dépend des dispositions figurant dans le document du régime. Si le régime offre l'indexation officielle à (75 % de l'IPC) - 2 %, on pourra retirer de l'excédent antérieur au 1er janvier 1987 un dollar pour chaque dollar consacré à financer la rétroactivité officielle. S'il reste encore un excédent antérieur à 1987 après la mise en place de la rétroactivité, il peut aussi être retiré. Cette mesure touchant la rétroactivité peut s'accompagner d'autres mesures incitatives.

The net effect of this proposed treatment of surplus is that the moratorium on surplus withdrawals from ongoing plans will be lifted but that plan sponsors will be able to access surplus from ongoing plans only through a dollar-for-dollar credit for retroactivity costs. This would be calculated as the difference between (75% of CPI) - 2% and any amount previously awarded in ad hoc increases. Once retroactive indexing has been fully funded based on the (75% of CPI) - 2% formula, the plan sponsor can withdraw any pre-1987 surplus, provided that the plan documents permit it. Plan sponsors would have until the effective date of the legislation to decide if they wish to accept this inducement, which cannot be used in conjunction with other inducements.

These conditions represent a modification of the Task Force approach which would not have permitted any withdrawal of surplus, (pre-1987 or not), until retroactivity is provided, and which had no provision for dollar-for-dollar sharing of surplus. This approach is proposed in recognition of the continuing contribution that ongoing pension plans make to the benefits of both active and retired pension plan members.

Sponsors of plans which were being wound up before February 9, 1988 would not be entitled to withdraw surplus funds until each member has been provided with the greater of:

a) **retroactive inflation protection at (75% of CPI) - 1%; or**
b) **the benefit of the 50% employer contribution rule, applied on a retroactive basis.**

This proposal is similar to the Task Force recommendation, but is more restrictive than the proposed provisions for ongoing plans. It is anticipated that this requirement would create a disincentive to employers to wind up pension plans or to convert plans to a less generous or secure format (for example, from defined benefit to defined contribution). The higher retroactive formula ((75% of CPI) - 1%) is a further disincentive to wind up or convert a plan.

The provision related to the 50% employer contribution has been added to the Task Force recommendation to provide plan members with further protection. The 50% value rule which came into effect on January 1, 1987 provides that an employer must pay at least 50% of the value of the employee's pension. Prior to 1987, when this rule was not yet in effect, in some jointly but nominally financed pension plans an employee could end up paying for his or her entire pension. Applying the 50% value rule retroactively in wind-ups where surplus exists ensures that the employee will get the additional benefit of the 50% value rule, in instances where this would be more beneficial than retroactive indexing.

L'effet net de cette affectation des excédents sera de lever le moratoire sur les retraits d'excédents des régimes exploités, mais les promoteurs ne pourront avoir accès aux excédents de ces régimes que par un crédit équivalant à ce qu'ils auront investi pour assumer les coûts de la rétroactivité. Méthode de calcul : la différence entre (75 % de l'IPC) - 2 % et tout montant antérieurement accordé en augmentations ponctuelles. Si l'indexation rétroactive est entièrement financée d'après la formule (75 % de l'IPC) - 2 %, le promoteur peut retirer tout excédent antérieur à 1987, si les documents du régime l'y autorisent.

Ces conditions constituent une modification de la formule avancée par le Groupe d'étude et selon laquelle aucun retrait d'excédent (antérieur ou non à 1987) n'aurait été autorisé tant que l'indexation rétroactive n'aurait pas été accordée; la proposition initiale ne comportait pas de mécanisme de partage égal de l'excédent. Cette façon de procéder vise à reconnaître l'enrichissement constant, accordé par les régimes de retraite exploités, aux prestations des travailleurs participants et des retraités.

Les promoteurs qui ont mis fin à leur régime avant le 9 février 1988 ne pourraient en retirer les fonds excédentaires tant que chaque participant n'aurait pas bénéficié de la plus favorable des mesures suivantes :

a) **protection-inflation rétroactive à (75 % de l'IPC) - 1 % ou**
b) **le bénéfice de la règle de la quote-part de l'employeur, appliquée rétroactivement.**

C'est une proposition analogue à la recommandation du Groupe d'étude, mais plus restrictive que les mesures proposées à l'égard des régimes exploités. Cette exigence devrait dissuader les employeurs de liquider leurs régimes ou de les convertir en formules moins généreuses ou moins sûres (par exemple passer d'un régime à prestations déterminées à une formule à cotisations déterminées). La formule rétroactive à (75 % de l'IPC) - 1 % est plus élevée, de sorte qu'elle devrait encore davantage dissuader les promoteurs de liquider ou de convertir leurs régimes.

La disposition relative à la règle de la quote-part de l'employeur a été ajoutée à la recommandation du Groupe d'étude pour offrir plus de protection aux participants. Cette règle de la moitié de la valeur, qui est entrée en vigueur le 1er janvier 1987, stipule que l'employeur doit verser au moins 50 % de la valeur de la rente de l'employé. Avant 1987, à l'époque où cette règle n'était pas en vigueur, il était possible, dans certains régimes de retraite financés conjointement de façon nominale, qu'un employé se retrouve dans l'obligation de payer entièrement sa rente. L'application rétroactive de la règle aux liquidations où il existe un excédent est une garantie que l'employé se verra accorder l'avantage supplémentaire de cette règle, si elle est plus avantageuse que l'indexation rétroactive.

Plan sponsors would be entitled to withdraw surplus created after January 1, 1987 only if the pension plan documents so provide.

The choice of January 1, 1987 stems from a related provision in the Pensions Benefits Act, 1987 that requires that plans be amended by January 1, 1990, to make clear whether or not a plan sponsor has an entitlement to withdraw surplus monies accrued after December 31, 1986. Without such clarity in the plan document, surplus withdrawals from ongoing plans, apart from the dollar-for-dollar retoactivity funding provision, will continue to be prohibited even after the moratorium is lifted.

Plan sponsors would continue to be permitted to take contribution holidays, subject to the funding regulations under the Ontario Pension Benefits Act, 1987.

Continuation of contribution holidays was recommended by the Task Force on Inflation Protection. The Task Force considered contribution holidays as "short term funding decisions", since the employer contribution is not set in defined benefit plans but varies depending on the needs of the plan. This is consistent with the present legislation, and is a necessary "safety valve" to permit compliance with Revenue Canada restrictions on the amount of surplus in a plan. Under Revenue Canada rules, if the surplus in the plan exceeds two years of contributions the plan could lose its tax exempt status.

Other Retroactivity Inducements

In addition to the linkages to pension plan surpluses, a number of other retroactivity inducements are proposed to encourage the voluntary provision by plan sponsors of retroactive indexing. Plan sponsors would have until the effective date of the legislation to decide if they wish to accept these inducements, which cannot be used in conjunction with the pre-1987 surplus provisions.

A key inducement will be an indexation formula phase-in period as follows:

- **(75% of CPI) - 2½% for the first five years after the effective date of the legislation;**
- **(75% of CPI) - 2% for the next five years for the future benefits and permanently for the retroactive component;**
- **(75% of CPI) - 1½% for the next five years for future benefits;**
- **(75% of CPI) - 1% thereafter for future benefits.**

Les promoteurs de régimes n'auraient le droit de retirer les excédents constitués après le 1er janvier 1987 que si les documents du régime de retraite les y autorisent.

Le choix de cette date découle d'une disposition connexe de la Loi de 1987 sur les régimes de retraite stipulant que les régimes doivent être modifiés, d'ici le 1er janvier 1990, pour qu'on y précise si le promoteur a ou non le droit de retirer les montants excédentaires constitués après le 31 décembre 1986. Faute de cette précision dans les documents des régimes, à l'exception de la disposition sur le financement dollar pour dollar de la rétroactivité, le retrait des excédents des régimes exploités demeurera interdit, même après la levée du moratoire.

Les promoteurs demeureraient autorisés à prendre des congés de cotisation, sous réserve des règles de financement prévues en vertu de la Loi de 1987 sur les régimes de retraite de l'Ontario.

Le Groupe d'étude avait recommandé le maintien des congés de cotisation, qui étaient perçus par lui comme une «décision de provisionnement à court terme», car la cotisation de l'employeur n'est pas fixe, dans un régime à prestations déterminées : elle varie en fonction des besoins du régime. Cette mesure est conforme à la loi actuelle et constitue une «soupape de sécurité» nécessaire pour permettre la conformité aux restrictions imposées par Revenu Canada sur le montant des excédents d'un régime. En vertu des règles de Revenu Canada, si l'excédent dépasse deux années de cotisation, le régime peut perdre son statut d'exonération d'impôt.

Autres mesures incitatives de rétroactivité

En plus des liens aux excédents des régimes de retraite, un certain nombre d'autres mesures incitatives sont préconisées, pour inciter les promoteurs à offrir volontairement l'indexation rétroactive. Les promoteurs de régimes auraient jusqu'à la date d'entrée en vigueur de la loi pour décider s'ils acceptent ces mesures d'encouragement, qui ne peuvent être utilisées conjointement avec les règles relatives aux excédents antérieurs à 1987.

Une des mesures incitatives clés sera la période d'introduction de la formule d'indexation, à savoir :

- **(75 % de l'IPC) - 2 % les cinq premières années suivant la date d'entrée en vigueur de la loi;**
- **(75 % de l'IPC) - 2 % les cinq années suivantes, à l'égard des prestations futures, et en permanence pour l'élément rétroactif;**
- **(75 % de l'IPC) - 1,5 %, les cinq années suivantes, à l'égard des prestations futures;**
- **(75 % de l'IPC) - 1 % par la suite, à l'égard des prestations futures.**

The main characteristic of the phase-in is that it can lower initial indexing costs to a significant extent, but it does so by allowing lower levels of inflation protection. For some plans the inducement could lower costs to such an extent that total benefits to plan members are reduced. To prevent this potential abuse, regulations will limit the use of this inducement so that associated cost savings do not exceed retroactive benefits. This limit is a new feature not canvassed by the Task Force.

For pension plans in which retroactivity is adopted by the plan sponsors, the phase-in is intended to work in the following manner:

- The retroactive aspect would apply to existing retirees as of the effective date of the legislation and to the level of pension payments they receive as of that date. There will be no "catch-up" for the inflation experienced between each existing retiree's date of retirement and the date the legislation comes into effect, although there will be protection against future inflation.

- The retroactive aspect will also apply to the past service credits of current employees. If, for example, an employee has been a member of the pension plan for 20 years before the effective date of the indexing legislation, then these credits will be indexed. When the employee retires, perhaps in 15 years, the entire retirement pension will be indexed. Without retroactivity in place only the credits earned prospectively, that is after the date the legislation becomes effective, will be indexed.

The benefit of retroactive inflation protection will apply to all retirees, including those who were deferreds. However, deferreds who have not yet reached retirement will not be included in calculating retroactive benefit enhancements. Once they cease to be deferreds, and become retired under terms of the pension plan, however, they will be protected from future inflation.

For five years this retroactivity will be at the formula of (75% of CPI) - 2½%. The clock will start on this five years period on the day the legislation comes into effect. The effect of the increased deductible can be seen by the example of a year in which there is 6% inflation: the formula (75% of a 6% increase in CPI) - 2½% results in a 2% indexing against inflation (instead of the 3½% provided under the full formula of (75% of CPI) - 1%).

The reason this deductible of 2½% reduces costs is because current and new employees will receive a lesser level of indexing credits for these five years to induce and enable the indexing of benefits for retires and the past service of current workers. In this way, the costs of retroactivity are shared between the employer and employees, both current and new.

After five years, the deductible will change from minus 2½% to minus 2%. This formula will apply for another five years for prospective indexing of benefits yet to be earned by current and

La principale caractéristique de cette période d'introduction est qu'elle peut réduire de façon appréciable les coûts initiaux d'indexation, mais elle y parvient en autorisant des niveaux moindres de protection contre l'inflation. Dans certains régimes, cette mesure incitative pourrait abaisser les coûts jusqu'à un point où les prestations totales des participants du régime seraient réduites. Afin d'éviter cet abus possible, le règlement limitera le recours à cette mesure incitative, de sorte que les économies de coût afférentes ne devront pas dépasser les prestations rétroactives. Cette limite est une nouvelle particularité non explorée par le Groupe d'étude.

Dans les régimes où les promoteurs ont adopté la rétroactivité, l'introduction devrait fonctionner comme suit :

- L'aspect rétroactif s'appliquerait aux retraités actuels dès la date d'entrée en vigueur de la mesure législative et jusqu'au niveau des versements de rentes qu'ils reçoivent depuis cette date. Il n'y aura pas de «rattrapage» à l'égard de l'inflation qui existait entre la date de départ de chaque retraité et la date d'entrée en vigueur de la loi, mais il y aura protection contre l'inflation future.

- L'aspect rétroactif s'appliquerait également aux crédits pour services passés des employés actuels. Ainsi, si l'employé participe au régime de retraite depuis 20 ans à la date d'entrée en vigueur de la mesure législative d'indexation, ses crédits seront indexés. Lorsque l'employé prendra sa retraite, dans 15 ans peut-être, toute la rente de retraite sera indexée. Sans cette rétroactivité, seuls les crédits acquis de façon prospective (après la date d'entrée en vigueur de la mesure législative) seraient indexés.

L'avantage de la protection rétroactive contre l'inflation s'appliquera à tous les retraités, y compris les titulaires de rentes différées. Cependant, parmi ces derniers, ceux qui n'ont pas encore atteint la retraite ne figureront pas dans le calcul de la revalorisation rétroactive des prestations. Par contre, lorsque leur situation sera normalisée et qu'ils seront devenus des retraités conformément aux dispositions du régime de retraite, ils seront protégés de l'inflation future.

Pendant cinq ans, la rétroactivité sera calculée selon la formule de (75 % de l'IPC) - 2,5 %. Il faut préciser que cette période commencera à la date d'entrée en vigueur de la loi. Prenons un exemple pour illustrer l'effet de cette franchise plus importante et supposons que, pour une année donnée, le taux d'inflation se situe à 6 % : la formule (75 % d'une hausse de 6 % de l'IPC) - 2,5 % donne une indexation de 2 %, au lieu des 3,5 % prévus à la formule normale de (75 % de l'IPC) - 1 %.

Pourtant, la raison pour laquelle cette franchise de 2,5 % réduit les coûts est que les crédits d'indexation des employés actuels et des recrues seront moindres, dans ces cinq années, pour favoriser et permettre l'indexation des prestations des retraités et du service passé des travailleurs actuels. Ainsi, le coût de l'indexation est partagé entre l'employeur et les travailleurs actuels et les recrues.

Après ces cinq années, la franchise passera de 2,5 % à 2 %. Cette nouvelle formule s'appliquera les cinq années suivantes à l'indexation prospective des prestations à acquérir par les employés actuels et les nouveaux. De plus, elle s'appliquera en permanence aux

new employees. It will also apply permanently for retroactive benefits, that is for retirees as of the effective date of the legislation and for the past service of current employees as of the effective date of the legislation.

After a further five years, the deductible for prospective indexing will change to minus 1½% and thereafter will rise to the original Task Force formula of (75% of CPI) - 1%.

In order to ensure that this phase-in formula protects pensioners and workers from prolonged periods of low inflation, such as 3%-4%, the government is also considering the possibility of imposing a "floor" on the phase-in formula. A minimum adjustment would moderate the effect of the 2½% deductible during periods of relatively low but prolonged inflation. Providing a minimum floor for retroactive adjustments would be desirable, but would add to the complexity of the phase-in formula. For this reason, the government will also be examining the possibility of modifying the phase-in formula to achieve the effect of a minimum floor without additional complexity. This examination will focus on the interaction of the phase-in formula with the other proposed retroactivity inducements set out below.

During the 15 year phase-in period plan sponsors who choose to grant retroactive increases will be permitted to commence inflation protection at the plan's normal retirement age.

Delaying the start of indexing to the plan's normal retirement age means, in most cases, that indexing will start at age 65 instead of age 60. The Task Force recommendation was similar in that indexing could, as an inducement, be delayed to age 65.

During the 15 year phase-in period plan sponsors who choose to grant retroactive increases will be permitted to apply a cap with a carry forward when the CPI increase exceeds 6%.

This inducement, recommended by the Task Force, has been modified in conjunction with the decision to set the overall indexing cap at 8% rather than 10%. In order to offer the incentive of a 2% lower cap to encourage retroactivity, a 6% level must be chosen.

An extended amortization period of 25 years for funding retroactive indexing benefits will be permitted for sponsors who grant formalized retroactivity. The 25-year amortization period would be phased out over 15 years.

This inducement, recommended by the Task Force, provides a longer period to spread out the funding of retroactivity costs, which would otherwise have to be funded over a 15-year amortization period. Although it increases the risk of underfunding of indexed benefits from plans terminated during the 25 year period, it is time-limited, and will apply only if retroactivity is provided. It is anticipated that this will ease the transition into the new era of indexing.

Plan sponsors who grant formalized indexing on past pension credits will be permitted to cap total annual costs in respect of indexing of past pension credits at 1% of payroll, with no carry forward.

prestations rétroactives, c'est-à-dire pour les retraités à compter de la date d'entrée en vigueur de la mesure législative et pour le service passé des employés actuels, également à compter de cette date.

Cinq ans plus tard, la franchise de l'indexation prospective passera à - 1,5 % et, par la suite, rejoindra la formule initiale de (75 % de l'IPC) - 1 % proposée par le Groupe d'étude.

Pour que cette formule d'introduction protège les retraités et les travailleurs en période prolongée d'inflation modérée, par exemple 3 % à 4 %, le gouvernement envisage la possibilité d'imposer un «seuil» à la formule d'introduction. Ainsi, un ajustement minimal amortirait l'effet d'une franchise de 2,5 %, en période d'inflation, prolongée mais relativement faible. Il serait souhaitable d'établir un seuil d'indexation, mais cela compliquerait la formule d'introduction. Le gouvernement étudiera donc la possibilité d'instaurer une formule modifiée produisant cet effet sans compliquer les choses. Il concentrera son étude sur la formule et d'autres mesures incitatives de rétroactivité décrites ci-après.

Dans la période d'introduction de 15 ans, les promoteurs qui choisissent d'accorder des hausses rétroactives seront autorisés à introduire la protection contre l'inflation à l'âge normal de la retraite prévu au régime.

Le report du début de l'indexation à l'âge normal de la retraite selon la définition du régime signifie que, dans la plupart des cas, l'indexation commencera à 65 ans au lieu de 60. Le Groupe d'étude formulait une recommandation analogue, à savoir que l'indexation pouvait, à titre de mesure incitative, être reportée jusqu'à 65 ans.

Pendant les 15 années de la période d'introduction, les promoteurs qui choisissent d'accorder des augmentations rétroactives seront autorisés à introduire un plafonnement avec report, si la hausse de l'IPC dépasse 6 %.

Cette mesure incitative, recommandée par le Groupe d'étude, a été modifiée compte tenu de la décision de plafonner l'indexation globale à 8 %, plutôt qu'à 10 %. Pour favoriser la rétroactivité en offrant l'incitation d'un plafonnement plus bas de 2 %, il faut choisir un taux de 6 %.

Les promoteurs qui institutionnalisent la rétroactivité pourront se prévaloir d'une période prolongée d'amortissement de 25 ans pour le provisionnement de l'indexation rétroactive des prestations. Cette période d'amortissement de 25 ans disparaîtrait progressivement sur 15 ans.

Cet encouragement, recommandé par le Groupe d'étude, offre une période plus longue pour répartir le financement des coûts de la rétroactivité qui, autrement, devraient être absorbés sur une période d'amortissement de 15 ans. Cela augmente les risques de sous-provisionnement des prestations d'indexation des régimes liquidés pendant cette période de 25 ans, mais cette mesure est limitée dans le temps et ne s'appliquera que si la rétroactivité est accordée. Cela devrait faciliter le passage à la nouvelle époque du système d'indexation.

Les promoteurs qui accordent l'indexation officielle des crédits de rente antérieurs pourront plafonner le coût annuel total d'indexation de ces crédits à 1 % de la masse salariale, sans report.

This is an additional inducement beyond those recommended by the Task Force. Its purpose is to limit the total cost exposure of employers for retroactivity to 1% of payroll. It responds to concerns that more generous plans or plans with older workforces would otherwise face high potential retroactivity costs and thus could not be induced to voluntarily adopt retroactivity. Such an inducement would be meaningful for approximately one-half of the pension plans studied by the Friedland Task Force. As such, it is a very significant addition to the inducement package. In some cases, the 1% will not be sufficient to pay for retroactivity at the standard retroactive level of (75% of CPI) -2%, and retroactive indexing benefits would have to be adjusted downward on a consistent basis, subject to any applicable floor.

Funding Of Inflation Protection

Mandatory prospective indexing will not be funded on a pay-as-you-go-basis as is currently permitted, but will be pre-funded in the same manner as other pension benefits pursuant to the regulations of the Pension Benefits Act, 1987.

Proper funding is essential to benefit security and is inherent to a responsible approach for the provision of mandatory inflation protection.

Plan sponsors will be permitted to continue to provide ad hoc inflation-related increases to their retirees, and such ad hoc increases will continue to be subject to the existing funding requirements of the Pension Benefits Act, 1987 and its regulations.

This means that the status quo funding rules will apply to ad hoc increases, so as not to discourage them from being offered to retirees.

Task Force Recommendations Not Adopted

All the twenty-eight recommendations of the Task Force on Employment Pension Plans were seen as persuasive and worthy of consideration. However, some are not proposed for implementation at this time.

The Ontario government will not introduce the sale of indexed bonds at this time.

The sale of such bonds, as recommended by the Task Force, be introduced would pass the risk of inflation from the plan sponsor to general taxpayers. Currently, plan investment managers are already capable of reducing inflation risk through investment decisions, and there are indexed investment vehicles available elsewhere in the marketplace.

The inflation protection component of employment pension plans will not be exempted from income considered in determining GAINS payments.

It would be unfair to recipients of GAINS who do not have employment pension income to exclude certain types of inflation-related income from consideration for GAINS eligibility. It is also administratively extremely difficult. This position is contrary to a recommendation of the Task Force to provide such exclusion.

Voilà une autre mesure incitative ne figurant pas dans les recommandations du Groupe d'étude. Elle a pour objet de limiter à 1 % de la masse salariale les dépenses totales des employeurs à l'égard de la rétroactivité. Sans cela, les régimes plus larges ou dont la main-d'oeuvre est plus âgée devraient faire face à des coûts potentiellement élevés et, en conséquence, ne pourraient être incités à adopter volontairement la rétroactivité. Cette mesure incitative serait adéquate dans environ la moitié des régimes de retraite étudiés par le Groupe d'étude Friedland. Comme tel, c'est un ajout très important à l'ensemble des mesures incitatives. Dans certains cas, la limite de 1 % ne suffira pas à financer la rétroactivité au niveau normalisé de (75 % de l'IPC) - 2 % et les prestations d'indexation rétroactive devront en conséquence être corrigées à la baisse sous réserve de tout seuil applicable.

Financement de la protection contre l'inflation

L'indexation prospective obligatoire ne sera pas financée par répartition, contrairement à ce que la loi autorise actuellement, mais préfinancée de la même façon que les autres prestations de retraite, conformément au règlement de la Loi de 1987 sur les régimes de retraite.

Un provisionnement adéquat est essentiel à la sécurité des prestations et indissociable d'une approche responsable à la mise en place de l'indexation obligatoire.

Les promoteurs de régimes pourront continuer à offrir à leurs retraités des indexations ponctuelles et ces indexations demeureront régies par les exigences actuelles de provisionnement de la Loi de 1987 sur les régimes de retraite et du règlement afférent.

Cela signifie qu'il y aura statu quo dans les règles de provisionnement, à l'égard des augmentations ponctuelles, de façon à ne pas dissuader les promoteurs de les offrir aux retraités.

Recommandations du Groupe d'étude non adoptées

Le Groupe d'étude a formulé 28 recommandations, toutes perçues comme extrêmement valables. Cependant, certaines ne seront pas mises en application maintenant.

Pour le moment, le gouvernement de l'Ontario n'introduira pas sur le marché d'obligations indexées.

L'adoption de la recommandation du Groupe d'étude sur l'introduction de ces obligations transmettrait le risque de l'inflation du promoteur à l'ensemble des contribuables. Actuellement, les administrateurs des régimes sont capables de réduire les risques d'inflation par leurs décisions d'investissement, sans compter qu'il existe sur le marché d'autres véhicules d'investissement indexés.

L'élément protection-inflation des régimes professionnels ne sera pas exempté du revenu considéré dans le calcul des versements RRAG.

Il serait injuste envers les récipiendaires de prestations RRAG sans revenu d'un régime professionnel d'exclure du calcul d'admissibilité à ce régime certains types de revenus liés à l'inflation. De plus, cela représente des difficultés administratives énormes. Cette position va à l'encontre d'une recommandation formulée à cet égard par le Groupe d'étude.

Ontario will not regulate group RRSPs under the Pension Benefits Act, 1987 and will not seek to lock-in a part of the sum accumulated in individual RRSPs.

Contrary to the recommendations of the Task Force, the government will not extend provincial regulation of private retirement savings arrangements to the level of group or individual Registered Retirement Savings Plans in an effort to supervise employers who wish to provide retirement savings arrangements for their workers outside the regulated area of registered pension plans. This recommendation has met with wide-spread opposition and has found no support from business or labour groups.

Impact Of Mandatory Inflation Protection On Business

THE COST OF PENSION INDEXING

If a defined benefit pension plan provides no inflation indexing, pension benefit costs do not change as a result of inflation, while inflation drives up the investment return on plan assets. The result is that plan sponsors can meet benefit obligations at reduced cost during periods of moderate to high inflation.

Mandating inflation protection for defined benefit pension plans increases the cost of such plans. Based on its recommended formula for inflation protection, the Friedland Report estimated that the shorter term cost of prospective indexing of pension plans will average 1.4% of payroll. The proposals now put forward for consultation would lower this cost.

In the past, a plan sponsor has been able to take into account investment returns on the plan portfolio and business conditions in deciding whether to adjust benefits in recognition of inflation. Sponsors argue that mandated indexing reduces their flexibility in making such adjustments. With flexibility reduced, mandatory indexing increases the risk that a sponsor will face a sharp increase in required pension contributions in a particular year. The cost of coping with these increased risks will lead to higher contributions. Where a sponsor decides to increase investment in assets such as treasury bills with a lower inflation risk, such investments will earn lower returns.

Sponsor and Employee Responses

Mandating pension indexing may increase employee compensation, including pension benefits, during a transition period of perhaps three to five years. This will occur in some, but not in all industries. Such an increase may come at the expense of customers or the earnings of sponsoring firms may be reduced. But even in these industries, neither customers nor sponsoring firms will bear the costs of indexing in the long run.

L'Ontario ne réglementera pas les REER collectifs en vertu de la Loi de 1987 sur les régimes de retraite et ne demandera pas l'immobilisation d'une partie du montant accumulé dans les REER individuels.

Malgré les recommandations du Groupe d'étude, le gouvernement n'élargira pas la réglementation provinciale des mécanismes privés d'épargne-retraite aux régimes enregistrés d'épargne-retraite personnelle, dans un effort pour exercer un contrôle sur les employeurs qui désirent offrir à leurs travailleurs des régimes d'épargne-retraite hors du domaine réglementé des régimes enregistrés de retraite. Les recommandations en ce sens ont suscité une opposition généralisée et n'ont trouvé aucun appui, tant dans le monde des affaires que dans le secteur syndical.

Effet de la protection-inflation obligatoire sur l'entreprise

LE COÛT DE L'INDEXATION DES RENTES

Si l'indexation en fonction de l'inflation n'est pas prévue dans un régime à prestations déterminées, le coût des prestations de retraite ne fluctue pas en fonction de l'inflation, tandis que celle-ci provoque un rendement accru des investissements du régime. En conséquence, les promoteurs peuvent répondre à leurs obligations à un moindre coût, dans les périodes où l'inflation est de modérée à élevée.

Rendre obligatoire la protection-inflation des régimes à prestations déterminées se traduit par une hausse des coûts de ces régimes. En se fondant sur la formule qu'il recommandait à l'égard de la protection contre l'inflation, le Groupe d'étude Friedland estimait que le coût à court terme de l'indexation prospective des régimes de retraite se situerait en moyenne à 1,4 % de la masse salariale. Les propositions actuelles formulées à des fins de consultation abaisseraient ce coût de façon appréciable.

Dans le passé, le promoteur a pu tenir compte du rendement d'investissement du portefeuille et de sa situation pour décider de revaloriser ou non les prestations pour tenir compte de l'inflation. Les promoteurs estiment que l'indexation obligatoire leur donne moins de souplesse à cet égard. En conséquence, en raison des indexations obligatoires, le promoteur risque davantage de devoir absorber une hausse appréciable des cotisations de rentes nécessaires, dans une année donnée. Faire face à ces risques accrus suppose des coûts, qui se traduiront par une augmentation des cotisations. Si le promoteur décide d'investir davantage dans des éléments d'actif moins exposés à l'inflation, par exemple les bons du Trésor, il obtiendra un rendement plus faible.

Réactions des promoteurs et des employés

L'indexation obligatoire des rentes peut offrir aux employés une meilleure indemnisation, y compris au niveau des prestations de retraite, pendant une période de transition de trois à cinq ans peut-être. Cela se produira dans certaines industries, mais pas dans toutes. Cette augmentation peut se produire aux dépens des clients ou entraîner une baisse des gains des entreprises-parrains. Cependant, même dans ces industries, ni les clients ni les entreprises-parrains n'assumeront, à long terme, le coût de l'indexation.

Pension benefits are part of total employee compensation, and over time the level of wages and the terms of pension plans and other benefits will be adjusted to compensate for indexing. Such adjustments will be made to allow the sponsoring firm to remain competitive with other firms which do not sponsor pension plans or which operate outside of Ontario and are not required to index pensions. In most cases, the cost of any lasting improvement in pension benefits will likely be paid for by the employees benefitting from the improvements, once adjustments have been made.

If employees do not value the increase in pension benefits at their full cost to the sponsor, employers can change the terms of the plan to offset the cost of indexing. Initial benefits may be reduced and supplementary benefits can be made less generous. In other cases, existing pension benefits will be indexed at the expense of current wages or other supplementary benefits.

Impact on the Economy

Increases in total compensation during the short-run transition period are not likely to result in a perceptible impact on employment or on the competitiveness of Ontario industries on the whole. In some cases, negotiations to determine a new mix of compensation may be difficult. However, the proposed phase-in period will reduce such difficulties.

A more significant issue is the increased inflation risk likely to be borne by plan sponsors over the long term. This is particularly the case because unexpected increases in plan liabilities resulting from accelerated inflation may also be accompanied by other adverse economic conditions. However, it should be noted that plan sponsors face considerable risks associated with inflation even when benefits are not indexed. Inflation drives up pension benefits where they are related to current wages, such as in career or final average plans.

These risks will be significantly reduced by the features of the proposed indexation formula and approach. In particular, the 1% deductible and the cap on yearly indexing requirements to 8% of CPI increases will limit the risk of uncertainty to employers of costs associated with indexation.

Les prestations de retraite font partie du régime total d'indemnisation de l'employé et, au fil du temps, le niveau de rémunération et les conditions des régimes de retraite et les autres prestations seront ajustés pour compenser l'indexation, pour permettre au promoteur de demeurer concurrentiel, par rapport aux entreprises sans régime de retraite ou qui fonctionnent ailleurs qu'en Ontario et ne sont pas tenues d'indexer les rentes. Dans la plupart des cas, le coût de tout enrichissement durable des prestations de retraite sera probablement payé par les employés qui en bénéficieront, lorsque ces ajustements auront été apportés.

Si les employés n'accordent pas à l'augmentation des prestations de retraite une valeur correspondant au coût réel du promoteur, l'employeur peut modifier les conditions du régime pour compenser le coût de l'indexation. Il pourra réduire les prestations initiales et restreindre les prestations supplémentaires. Dans d'autres cas, les prestations des rentes actuelles seront indexées aux dépens des salaires et autres avantages offerts aux employés actifs.

Répercussions sur l'économie

Pendant la brève période de transition, une hausse de l'indemnisation totale ne devrait pas avoir de répercussions perceptibles sur les niveaux d'emploi, non plus que sur la position concurrentielle de l'ensemble des industries de l'Ontario. Dans certains cas, la négociation du réaménagement des régimes d'indemnisation pourra être difficile, mais la période d'introduction envisagée devrait aplanir ces difficultés.

Un des problèmes plus importants est le risque supplémentaire d'inflation que devront probablement assumer les promoteurs à longue échéance. C'est un problème d'autant plus grave que les hausses imprévues des charges du régime, en cas d'inflation galopante, pourraient s'accompagner d'autres conditions économiques défavorables. Cependant, il faut préciser que les promoteurs de régimes courent des risques considérables liés à l'inflation, même si les prestations ne sont pas indexées. L'inflation entraîne une majoration des prestations de retraite, si elles sont liées aux salaires actuels, comme c'est le cas des régimes de reconstitution de carrière ou de fin de carrière.

La formule et la stratégie d'indexation envisagées permettront, par leurs caractéristiques, de réduire considérablement ces risques. La franchise de 1 % et le plafonnement de l'obligation annuelle d'indexation à 8 % des hausses de l'IPC, notamment, réduiront les risques dus à l'incertitude des employeurs à l'égard des coûts liés à l'indexation.

2. Family Law Reforms

The Family Law Act, 1986 recognized for the first time in Ontario that an individual's entitlement to a pension was family property. This change was intended to acknowledge the contribution of both spouses to the accumulation of pension assets, consistent with the view that marriages are equal partnerships.

As a result of the Family Law Act, 1986, an individual's interest in a pension plan may be the subject of a court order or an agreement between spouses as part of the division of assets when marital breakdown occurs. The division of pension benefits between separating spouses has posed a number of issues regarding implementation of the policy principles involved, both for the spouses and their advisors, as well as for plan administrators, particularly in the case of defined benefit plans.

In recognition of the newly acquired status of pension assets as family property, a number of provisions were set out in the Pension Benefits Act, 1987 to govern the sharing of pension benefits between separating or divorcing spouses. In general, the Pension Benefits Act, 1987 leaves the determination of the appropriate sharing arrangement to domestic agreements between the parties and to the courts, while encouraging the trading of assets other than pensions. However, two provisions in the Pension Benefits Act, 1987 have a substantial impact on the method and timing of the sharing of pension benefits between spouses:

- the division of pension benefits; and
- the 50% share rule.

The first year's experience with the Act has indicated that these two requirements may unduly restrict the flexibility of the plan member and the receiving spouse to enter into the types of family property settlements which best meet their financial needs, and which ensure protection for the interests of the parties. Indications from individuals and professionals involved in consulting, administering and advising on pension and family law matters have also reinforced the need for amendments to the Pension Benefits Act, 1987 to facilitate the division of pension benefits between separating spouses. To address the needs of families in Ontario, several reforms are proposed which are intended to improve the family property settlement process where pensions are involved.

DIVISION OF PENSION BENEFITS

The current Pension Benefits Act, 1987 rule prohibiting transfers of pension benefits to a spouse until the pension is being paid to the plan member, limits the choices available to spouses entering into family settlement arrangements. In effect, the plan member must either transfer other property to the spouse in a lump sum payment instead of the pension, or the parties must

2. Réforme du droit de la famille

La Loi de 1986 sur le droit de la famille reconnaissait pour la première fois dans la province comme bien familial le droit de rente acquis par une personne. Cette modification visait à reconnaître l'apport des deux conjoints dans l'accumulation de l'actif d'une rente professionnelle, conformément à la nouvelle façon de percevoir le mariage comme une association à parts égales.

Conformément à la Loi de 1986 sur le droit de la famille, l'intérêt d'une personne dans un régime de retraite peut faire l'objet d'une décision du tribunal ou d'une entente entre conjoints dans le cadre de la répartition des biens, à la rupture du mariage. La répartition des prestations de retraite entre les conjoints qui se séparent a posé un certain nombre de problèmes relatifs à la mise en application des orientations politiques en cause, tant pour les conjoints que pour leurs avocats, ainsi que pour les administrateurs des régimes, notamment ceux à prestations déterminées.

La reconnaissance du nouveau statut de l'actif de retraite en tant que bien familial a suscité l'introduction à la Loi de 1987 sur les régimes de retraite d'un certain nombre de dispositions régissant le partage des prestations de retraite entre les conjoints qui se séparent ou divorcent. En règle générale, cette loi laisse au contrat de mariage entre les parties et aux tribunaux le soin de déterminer les modalités adéquates de partage, tout en favorisant l'échange d'éléments d'actif autres que les rentes. Cependant, deux dispositions de la Loi de 1987 sur les régimes de retraite ont une grande incidence sur la méthode et l'échéancement du partage des prestations de retraite entre les conjoints :

- la répartition des prestations de retraite et
- la règle du partage égal

L'expérience acquise dans la première année d'application de la loi montre que ces deux exigences restreignent peut-être indûment le choix du participant et de l'autre conjoint de s'entendre sur d'autres modalités de partage des biens de la famille qui répondraient adéquatement à leurs besoins financiers tout en protégeant les intérêts des parties. Les renseignements recueillis de personnes et de spécialistes de l'administration et des services-conseils en matière de rentes et de droits de la famille font d'autant plus ressortir la nécessité de modifier la Loi de 1987 sur les régimes de retraite pour faciliter la répartition des prestations de retraite entre les conjoints qui se séparent. Pour répondre aux besoins des familles ontariennes, nous préconisons plusieurs réformes qui amélioreront le mécanisme de partage des biens de la famille, en ce qui touche les rentes.

LA RÉPARTITION DES PRESTATIONS DE RETRAITE

La disposition de la Loi de 1987 sur les régimes de retraite interdisant le transfert des prestations de retraite à un conjoint jusqu'à ce que la rente soit versée au participant limite les choix offerts aux conjoints qui doivent se partager les biens de la famille. En fait, soit que le participant doive céder d'autres biens au conjoint en un montant forfaitaire tenant lieu de rente, soit que les parties s'entendent et que le conjoint reçoive une certaine partie de la rente, lorsqu'elle sera servie. Il se peut que la première solution n'existe pas, s'il n'y a pas d'autres

agree that the spouse will receive some portion of the pension when it is in payment. The former approach may not be possible where other assets are not available to share, or where the value of the pension is very large compared to other family property. As a result, the latter approach, whereby payment to the spouse is delayed until payments are received by the plan member, may be the only option available to the parties and their advisors.

However, in settlements where the spouse agrees to receive a portion of the pension when it is in payment, there is no guarantee the spouse will receive the benefits agreed upon in the settlement, because the spouse's entitlement is to some degree contingent on the member reaching retirement and receiving a pension. The spouse's entitlement is therefore at risk to the extent that the member may choose to work beyond normal retirement date, take any other action which may affect the timing of payment or the value of the benefits, such as early termination, or die before the benefits have been paid out of the pension. In addition, this approach tends to require that a long-term economic relationship be maintained between the spouses, so that "finality" of relations may not be achieved at the date of settlement. An example for illustrative purposes is set out below.

Example:

Ted and Alice are 41 and 42 years of age respectively, and have been married for 16 years. Alice has been employed by the City Public Utilities Commission for 20 years, and Ted works part-time in a retail operation which offers no pension. The valuation of net family property upon marriage breakdown is as follows:

	Alice	Ted
Pension	$ 70,000	
Furnishings	$ 3,000	$ 3,000
RRSP		$ 9,000
Car	$ 5,000	
Total	**$ 78,000**	**$ 12,000**

Equalization (Alice to Ted) 1/2 (78,000 - 12,000) = **$33,000**

Because there are no assets available in this example which can be used to satisfy the equalization claim without dividing the pension, the sharing of assets other than the pension may not be possible. The spouses might therefore agree to share Alice's pension benefits in order to satisfy Ted's equalization claim, and are likely to enter into a settlement arrangement, whereby Ted will receive some portion of Alice's pension if, as and when it is in payment (sometimes referred to as a "wait and see" agreement).

If Ted and Alice enter into a settlement agreement whereby Ted will receive a certain amount from the pension once the pension commences, (i.e. a "wait and see" agreement), and Alice dies before retirement, there is a risk that Ted may not receive the full value of his interest in the pension. Likewise, if Alice dies shortly after retirement there is the risk that Ted may not receive the benefits agreed to in the settlement. Ted's entitlement would also be affected if Alice remarried.

In addition, the parties' expectations may be altered should Alice decide to retire beyond the normal retirement date under the plan, so that payment to Ted is delayed. As a result of these possible scenarios, Ted and Alice must try to build various alternatives into the settlement agreement in order to anticipate and provide for these contingencies.

éléments d'actif à partager, ou si la valeur de la rente est très importante, comparativement aux autres biens familiaux. En conséquence, la deuxième solution, soit le report des versements au conjoint jusqu'à ce que la rente soit servie au participant, pourrait être la seule solution offerte aux parties et à leurs conseillers.

Par contre, en cas de partage, si le conjoint accepte de recevoir une partie de la rente lorsqu'elle sera servie, il n'y a aucune garantie que cette personne recevra les prestations convenues lors du partage, car son droit dépend dans une certaine mesure de la condition que le participant atteigne l'âge de la retraite et reçoive une rente. Le droit du conjoint n'est donc pas garanti, dans la mesure où le participant peut choisir de continuer à travailler au-delà de l'âge normal de la retraite ou prendre d'autres dispositions pouvant influer sur le calendrier des versements ou sur la valeur des prestations ou encore, il est possible qu'il meure avant que les prestations aient été puisées au régime. De plus, cette façon de procéder exige habituellement le maintien de rapports économiques à long terme entre les conjoints, de sorte que la «fin de la relation» pourrait ne pas être atteinte à la date du règlement. Voici un exemple illustrant ce cas.

Exemple :

Ted et Alice ont respectivement 41 et 42 ans et sont mariés depuis 16 ans. Alice travaille à la Commission municipale d'électricité depuis 20 ans et Ted est à temps partiel dans un commerce de détail sans régime de retraite. L'évaluation de l'avoir net de la famille à la rupture du mariage se présente comme suit :

	Alice	*Ted*
Pension	*70 000 $*	
Biens immobiliers	*3 000 $*	*3 000 $*
REER		*9 000 $*
Voiture	*5 000 $*	
Total	*78 000 $*	*12 000 $*

Compensation (d'Alice à Ted) : la moitié de (78 000 $ - 12 000 $) = 33 000 $

Puisqu'il n'y a, dans cet exemple, aucun élément d'actif utilisable pour répondre à la demande de compensation sans diviser la rente, le partage des éléments d'actif autres que celle-ci pourrait être impossible. Les conjoints doivent donc s'entendre sur le partage des prestations de retraite d'Alice afin de répondre à la demande de compensation de Ted et concluront probablement une entente de partage dans laquelle Ted devra recevoir une certaine partie de la rente d'Alice, à la valeur atteinte lorsqu'elle sera versée, si elle l'est (contrat «attentiste»).

Si Ted et Alice concluent un accord de partage dans lequel Ted recevra un certain montant de la rente lorsque celle-ci sera servie (contrat «attentiste») et qu'Alice meurt avant de prendre sa retraite, Ted risque de ne pas recevoir entièrement la valeur de son droit à la rente. De même, si Alice meurt peu de temps après son départ à la retraite, Ted risque de ne pas recevoir les prestations convenues à l'entente. De plus, si Alice se remariait, cela aurait des effets sur les droits de Ted.

En outre, les attentes des parties pourraient ne plus concorder, si Alice décide de prendre sa retraite au-delà de l'âge normal prévu au régime et retarde ainsi les versements dus à Ted. Il découle de ces scénarios possibles que Ted et Alice doivent essayer d'intégrer à l'entente de partage diverses possibilités, afin de prévoir les éventualités et d'y répondre.

THE 50% SHARE RULE

In addition to prohibiting the immediate division of pension benefits on marital breakdown, the Pension Benefits Act, 1987 restricts the proportion of pension benefits to which a spouse can become entitled under a property settlement arrangement to 50%, when valued at the date of separation. The original intent behind this provision was to ensure that the plan member retained, as a minimum, half of the accumulated benefits when valued at the date of separation. In practice, this rule creates a number of difficulties in the sharing of pension benefits between spouses, by complicating the settlement process, restricting the parties' ability to enter into agreements which satisfy their particular needs and, in some cases, leading to inequitable results, particularly for the receiving spouse.

The value of some types of pensions, notably pensions in final average plans, can increase substantially as the plan member nears the final few years of membership, an increase which applies retroactively to all accrued benefits. As a result, the value of the pension as determined at the date of the separation, (often referred to as the "termination" valuation method), and hence the amount of the pension that can be shared between spouses in the settlement, may be fairly low in comparison with the projected value at retirement, adjusted to take into account the length of the marriage as a proportion of the number of years of plan membership (often referred to as the "retirement" method of valuation). In effect, the value at the date of separation may not fairly represent the ultimate value of the pension. It may therefore be appropriate, in some circumstances, to permit the spouses to share more than 50% of the pension to compensate for the fact that the termination value may not be a true representation of the value of the pension to the member.

If the parties agree, or a court orders that it is appropriate to value the pension for family law purposes using the "retirement" valuation method rather than the "termination" valuation method, there is a substantial risk that the agreement or court order will violate the 50% share rule, depending on what portion of the benefits is allocated to the spouse. However, the fact that the settlement violates the 50% share rule may not be apparent to the parties unless it is "tested" by an actuary against the rule. This process adds expense to the litigation process and in practice is not always carried out.

In this regard, it is important to note that, in accordance with the family property requirements under the Family Law Act, 1986, the member's pension, like all other family property, must be given a value by the spouses. This is necessary to calculate the net wealth of each spouse, and to determine the amount required to equalize the spouses' net worth. However, neither the Family Law Act, 1986 nor the Pension Benefits Act, 1987 requires the parties to use a particular method for determining the value of assets; this matter is left up to the parties or the court. The problem in relation to the Pension Benefits Act, 1987 arises if the spouses value the pension in a way which produces a greater value than would result using the "termination" valuation method. This can be illustrated by the following example.

LA RÈGLE DU PARTAGE ÉGAL

En plus d'interdire la division immédiate des prestations de retraite à la rupture du mariage, la Loi de 1987 sur les régimes de retraite limite la partie des prestations de retraite auxquelles un conjoint peut avoir droit en vertu d'une entente de partage des biens à la moitié de la valeur de ces prestations à la date de la séparation. L'intention initiale de cette disposition était de veiller à ce que le participant conserve au moins la moitié des prestations accumulées, évaluées à la date de la séparation. Dans la pratique, cette règle crée un certain nombre de difficultés dans la répartition des prestations de retraite entre conjoints, car elle complique le mécanisme de partage, restreint la capacité des parties de parvenir à une entente répondant à leurs besoins particuliers et, dans certains cas, aboutit à des résultats inéquitables, notamment pour le conjoint indemnisé.

La valeur de certains types de rentes, notamment celles des régimes fin de carrière, peut augmenter considérablement à mesure que le participant s'approche des dernières années de service, et cette hausse s'applique rétroactivement à toutes les prestations constituées. En conséquence, la valeur de la rente, fixée à la date de la séparation (cette méthode s'appelle souvent «évaluation de cessation») et, partant, le montant de la rente à partager par règlement entre les conjoints peuvent être assez faibles, comparativement à la valeur projetée à la retraite, corrigée pour tenir compte de la durée du mariage, et du nombre d'années d'adhésion au régime (méthode aussi appelée «évaluation à la retraite»). En fait, la valeur, à la date de la séparation, ne représente peut-être pas adéquatement la valeur ultime de la rente. Il serait donc probablement justifié, dans certains cas, d'autoriser les conjoints à partager plus de la moitié de la rente, pour rendre compte du fait que la valeur au moment de la cessation ne donne peut-être pas une idée fidèle de la valeur réelle de la rente pour le participant.

Si les parties conviennent ou que le tribunal décide, aux fins du droit de la famille, d'évaluer la rente à la retraite plutôt qu'à la cessation, l'accord ou la décision du tribunal risque fort d'enfreindre la règle du partage égal, selon la part des prestations attribuée au conjoint. Cependant, le fait que le partage enfreint la règle n'est peut-être pas évident pour les parties, à moins d'une vérification effectuée par un actuaire. Cette façon de procéder ajoute des frais au mécanisme de règlement des litiges et, dans la pratique, on n'y recourt pas toujours.

À ce propos, il est important de signaler que, conformément aux exigences de la Loi de 1986 sur le droit de la famille relativement aux biens familiaux, la rente du participant, comme tout autre bien familial, doit être évaluée par les conjoints. C'est en effet nécessaire pour calculer la richesse nette de chaque conjoint et le montant nécessaire pour égaliser leurs valeurs nettes. Cependant, ni la Loi de 1986 sur le droit de la famille, ni la Loi de 1987 sur les régimes de retraite n'obligent les parties à recourir à telle ou telle méthode pour calculer la valeur de l'actif; cette question est laissée à la discrétion des parties ou du tribunal. En ce qui a trait à la Loi de 1987 sur les régimes de retraite, le problème survient si les conjoints évaluent la rente par une méthode donnant une valeur plus grande que celle qui résulterait de la méthode d'évaluation à la cessation. Voici un exemple illustrant ce fait.

Example:

David and Shirley are 59 and have been married for 35 years. Shirley helped put David through business school and David is employed as a manager at an auto parts manufacturing company. He will be entitled to receive a generous pension which will be based on his salary in the last 3 years before retirement. Normal retirement age under the plan is 65. The spouses have agreed on the division of all property except the pension.

Because of the long-term nature of the relationship, and Shirley's contribution to David's career, the court accepts Shirley's argument that the pension should be valued using the "retirement method", rather than the termination method. This valuation method will produce a high value for the pension because it takes into account the fact that the pension will increase substantially after the date of separation based on projected earnings near retirement, and the increase will apply retroactively to all accrued benefits. The equalization scheme is as follows:

	David	Shirley
Value of pension (retirement valuation)	*$150,000*	

Equalization claim 1/2 ($150,000) = $75,000

The court may order that David shall become a trustee over Shirley's interest in the pension ($75,000), with the payment to be made on a "wait and see" basis. However, if the pension were valued using the termination method, the value could be much less -- $60,000 for example. The 50% share rule prohibits Shirley from receiving more than 50% of the benefits as valued using the termination method (i.e., $30,000). Therefore, a court order or settlement purporting to give Shirley $75,000 out of the pension benefits could be challenged as contrary to the PBA, 1987. As a result, an additional $45,000 worth of assets must be transferred by David to Shirley. This can be problematic if there are no other family assets available to be shared. Also, if the value of the pension is not "tested" by an actuary in this way, the parties could inadvertently violate the 50% share rule.

Furthermore, since some settlement agreements have been entered into without being tested against this rule, there is concern that some recent agreements violate the 50% share rule and to that extent, may be valid under the Pension Benefits Act, 1987. This would be particularly detrimental to the non-member spouse.

In addition, there is a potential for plan administrators to be caught in the middle of a dispute between spouses if the plan administrator does not ensure the settlement complies with the 50% limit.

Exemple :

David et Shirley ont 59 ans et sont mariés depuis 35 ans. Shirley a aidé David à faire son cours commercial. David a un emploi de gérant dans une entreprise de fabrication de pièces d'automobiles. Il aura droit à une rente généreuse calculée d'après son salaire des trois dernières années précédant la retraite. L'âge normal de la retraite prévu au régime est de 65 ans. Les conjoints se sont mis d'accord sur le partage de tous les biens, sauf la rente.

En raison de la nature prolongée de leur relation et de la contribution de Shirley à la carrière de David, le tribunal reçoit l'argument de Shirley selon lequel la rente devrait être évaluée d'après sa valeur à la retraite, plutôt qu'à la cessation. Cette méthode donnera à la rente une valeur élevée, car elle tient compte du fait que cette rente augmentera considérablement après la séparation en fonction des gains prévus dans les années précédant la retraite et compte tenu du fait que la hausse s'appliquera rétroactivement à toutes les prestations constituées. Voici le régime de compensation.

	David	Shirley
Valeur de la rente (évaluation à la retraite)	150 000 $	

Réclamation de compensation : 0,5 (150 000 $) = 75 000 $

Le tribunal peut décider que David sera le fiduciaire de l'intérêt de Shirley dans la rente (75 000 $) et que le versement sera fait sur une base d'attentisme. Cependant, si la rente était évaluée par la méthode de la cessation, sa valeur pourrait être bien inférieure, par exemple 60 000 $. La règle du partage égal n'autorise pas Shirley à recevoir plus de 50 % des prestations évaluées par la méthode de la cessation (soit 30 000 $). En conséquence, une décision du tribunal ou un règlement accordant à Shirley 75 000 $ de prestations de retraite pourrait faire l'objet d'un appel, parce que contraire à la Loi de 1987 sur les régimes de retraite. En conséquence, David doit céder à Shirley d'autres éléments d'actif d'une valeur de 45 000 $. Cela peut devenir problématique, s'il n'y a pas d'autres biens familiaux à partager. Et si la valeur de la rente n'est pas vérifiée de cette façon par un actuaire, les parties pourraient, par mégarde, contrevenir à la règle du partage égal.

Et, puisque certaines ententes de partage ont été conclues sans vérification par rapport à la règle, on peut se demander si certaines ententes récentes manquent à la règle du 50 % et, si cela s'avère, risquent d'être invalidées en vertu de la Loi de 1987 sur les régimes de retraite. Cela pourrait causer des torts considérables au conjoint non cotisant.

De plus, il est possible que les administrateurs du régime se trouvent mêlés à un litige entre les conjoints, s'ils ont négligé de veiller à ce que le règlement de partage respecte la limite du 50 %.

PROPOSALS FOR REFORM

Credit Splitting

The first reform proposed is to permit the splitting of pension benefits between spouses upon marriage breakdown, so that a member of a pension plan may convey an immediate interest to a spouse of a portion of his or her pension benefit, as agreed to by the parties in a domestic contract or ordered by a court.

This approach to division of pension benefits, sometimes referred to as "credit splitting", is similar to the provisions for pension sharing on marriage breakdown under the federal Pension Benefits Standards Act. Credit splitting would be an alternative option for spouses in addition to the options currently available for dealing with pensions when marital breakdown occurs, such as transferring assets in lieu of the pension, and "wait and see" agreements.

Under the proposed approach, the non-member spouse would be considered to be a pension plan member who has terminated employment. The non-member spouse would become, in effect, a deferred member of the pension plan in respect of the transferred benefits, and the benefits of both the member and transferee would be subject to the requirements of the Pension Benefits Act, 1987. Under this proposal, the portion of the benefits transferred to the spouse would be subject to the portability requirements under the Pension Benefits Act, 1987, and the spouse would have several options.

The spouse could require the administrator to roll the commuted value of the benefits into another locked-in retirement vehicle such as a locked-in RRSP or into another pension plan if permitted by the administrator of the other plan, or the funds could be used to purchase a deferred annuity for the spouse. A deferred annuity would not commence before the earliest date at which the spouse would have been entitled to receive payment of a pension benefit under the plan. In addition, where the plan so provided, the spouse would have the option of keeping the benefits in the plan, and would then be entitled to a deferred payment from the pension plan that would commence at the earliest on his or her normal retirement date.

Under this approach, a virtually complete separation of the interests of the two spouses would be possible, and the portion of the benefit transferred to the receiving spouse would not be affected by the death or remarriage of the member-spouse. Another advantage of this proposal is that an immediate settlement of the spouse's entitlement could be made. In addition, since the spouse's entitlement would not be tied to the member, greater security would be provided for the receiving spouse, and greater finality of property division facilitated. The Act does not preclude other methods of satisfying equalization claims, so it is neutral with respect to the decision as to whether the spouses should share pension benefits or transfer other property. As well, a greater degree of harmonization between other legislation governing family property settlements would also be achieved.

One variation of this approach which was considered was to allow the non-member spouse the option of keeping his or her benefits in the plan so that the spouse would be treated as though he or she were a new member of the pension plan. While this approach might have some merit in achieving an even greater degree of flexibility for the non-member spouse in some circumstances, it would also involve additional administrative burden for plan sponsors. The proposed solution would not prevent plan administrators from allowing spouses to retain the benefits in the plan where this was feasible,

PROPOSITIONS DE RÉFORME

Partage des crédits

La première réforme proposée est d'autoriser le partage des prestations de retraite entre les conjoints, à la dissolution du mariage, de sorte que le participant au régime puisse transmettre à son conjoint un droit immédiat sur une partie de ses propres prestations de retraite, tel que convenu entre les parties par contrat familial ou décision du tribunal.

Cette façon de séparer les prestations de retraite, parfois appelée «partage des crédits», est analogue aux dispositions de partage des rentes prévues à la Loi sur les normes de prestation de pension (LNPP) du fédéral relativement au partage de la rente à la rupture du mariage. Le partage des crédits offrirait en ce cas une autre solution aux conjoints, en plus des choix qui existent actuellement à l'égard des rentes, par exemple le transfert d'éléments d'actif tenant lieu de rentes et les accords «attentistes».

Dans la méthode envisagée, le conjoint non cotisant serait réputé être un participant qui a quitté son emploi. Le conjoint non cotisant deviendrait en fait un titulaire de rente différée du régime de retraite, à l'égard des prestations cédées et les prestations du participant et du cessionnaire devraient répondre aux exigences de la Loi de 1987 sur les régimes de retraite. En vertu de cette proposition, la partie de rente cédée au conjoint devrait répondre aux exigences de transférabilité prévues à cette loi et le conjoint se verrait offrir plusieurs choix.

Le conjoint pourrait demander à l'administrateur de transférer la valeur actualisée des prestations dans un autre régime de retraite immobilisé, par exemple un REER immobilisé, ou dans un autre régime de retraite, si l'administrateur de ce dernier y consent, ou encore, les fonds pourraient permettre d'acquérir une rente différée destinée au conjoint. La rente différée ne pourrait être servie avant la date la plus hâtive à laquelle le conjoint aurait eu droit aux prestations de retraite en vertu du régime. En outre, si la chose est prévue dans le régime, le conjoint aurait la possibilité de laisser les prestations dans la caisse de retraite et aurait alors droit, de la part du régime, à un versement différé qui pourrait commencer au plus tôt à la date normale de la retraite.

De cette façon, il serait possible de séparer totalement les intérêts des deux conjoints et la part des prestations transférées au conjoint non cotisant ne serait pas touchée par le décès ou le remariage du conjoint participant. Un autre avantage de cette proposition est qu'il serait possible de régler immédiatement le droit du conjoint. En outre, puisque ce droit n'aurait aucun lien avec le participant, le conjoint non cotisant bénéficierait d'une plus grande sécurité, sans oublier le fait que le partage des biens serait plus définitif. La loi n'interdit pas le recours à d'autres méthodes pour répondre aux demandes de compensation : elle est donc neutre, sur la question de savoir si les conjoints doivent se partager les prestations de retraite ou céder d'autres biens. De cette façon, on réaliserait aussi une meilleure harmonisation des autres mesures législatives régissant le partage des biens familiaux.

Une autre variante envisagée était de donner au conjoint non cotisant le choix de conserver ses prestations dans le régime de retraite, de sorte qu'il serait traité comme s'il était un nouveau participant. Cette solution aurait quelque avantage en offrant dans certains cas encore plus de souplesse au conjoint non cotisant, mais il reste qu'elle imposerait aux promoteurs un fardeau administratif supplémentaire. La solution avancée n'empêcherait pas les administrateurs du régime d'autoriser les conjoints à laisser les prestations au régime, si la

although in most cases it is likely the spouse will prefer to transfer the funds out of the plan and into his or her own locked-in RRSP or other retirement vehicle.

Elimination of the 50% Share Rule

The second reform proposed is to eliminate the existing prohibition against allocating to a spouse more than 50% of the pension benefits as valued on the date of separation.

This amendment would remove an existing restriction in the Act that can sometimes operate to the detriment of the receiving spouse due to the fact that the valuation of the pension at the date of separation can result in a lower value than alternative methods of valuation which might be more appropriate.

The elimination of the 50% share rule would have the advantage of allowing the parties to determine the method of valuation and the portion of benefits to be shared in accordance with their needs. In particular, the parties would be able to divide a pension in any proportion based on its value at the date of the retirement if this was desired. It would also eliminate the need to "test" settlements against the 50% share rule, thereby lowering professional costs. The proposed approach would also be consistent with that taken in federal legislation, which provides that a member may assign all or part of the pension benefit to the spouse. It is also proposed that the elimination of the 50% rule requirement be made retroactive to the proclamation of the Pension Benefits Act, 1987 to alleviate concerns that recent settlements may contravene the 50% share rule and hence violate the Pension Benefits Act, 1987.

BENEFITS OF PROPOSED REFORMS

The key benefit of the proposed family law pension reforms is to provide for a greater degree of flexibility in the timing and method for division of pension assets when marital breakdown occurs, so that separating or divorcing spouses and their professional advisors would be granted the flexibility to structure family property arrangements that are equitable and effective in view of the circumstances of the individuals involved. These reforms would better reflect the fundamental principle that pensions are no longer the exclusive property of the plan member. It is anticipated that these reforms would better address the changing needs of Ontario families in keeping with the principles underlying the Family Law Act, 1986.

The provision of new rules to allow for flexibility and fairness in settlement design must be balanced against any new responsibilities and additional complexities for plan administrators and other professionals who must administer and enforce the settlements, and ensure that administration of the reforms is workable in practice. As with other pension reforms, some adjustments may be necessary on the part of those who administer pensions to ensure that a fairer system for all is created. Comment is invited from all interested parties on the technical and practical aspects of these proposals.

possibilité existe, mais dans la plupart des cas, le conjoint préférera probablement retirer les fonds du régime et les transférer à son propre REER immobilisé ou dans un autre régime de retraite.

Élimination de la règle du partage égal

La deuxième réforme mise de l'avant est d'éliminer l'interdiction actuelle d'accorder au conjoint plus de la moitié des prestations de retraite à leur valeur à la date de séparation.

Cet amendement éliminerait la restriction actuelle de la loi qui peut parfois désavantager le conjoint non cotisant, en raison du fait que l'évaluation de la rente à la date de la séparation peut donner une valeur inférieure à d'autres méthodes d'évaluation éventuellement plus adéquates.

L'élimination de cette règle du partage égal aurait l'avantage d'autoriser les parties à fixer la méthode d'évaluation et la part des prestations à partager en fonction de leurs besoins. Les parties pourraient notamment séparer la rente dans n'importe quelle proportion d'après sa valeur à la date de la retraite, si elles le souhaitent. On éliminerait aussi la nécessité d'une contre-vérification du partage par rapport à la règle du partage égal, d'où une diminution des frais professionnels. La solution proposée serait de plus conforme à la loi fédérale, qui stipule qu'un participant peut accorder tout ou partie de la rente à son conjoint. Nous proposons en outre de rendre rétroactive à la proclamation de la LRR de 1987 l'élimination de cette exigence, car certains règlements récents pourraient aller à l'encontre de la règle du partage égal et donc enfreindre cette loi.

AVANTAGES DES RÉFORMES PRÉCONISÉES

Le principal avantage des projets de réforme du droit de la famille est d'offrir plus de souplesse dans l'échéancement et les méthodes de répartition des rentes, à la rupture du mariage, de façon que les conjoints qui se séparent ou divorcent et leurs conseillers professionnels puissent avoir la possibilité de structurer le partage des biens familiaux de façon équitable et efficace, eu égard aux circonstances, dans chaque cas particulier. Ces réformes rendraient mieux compte du principe fondamental voulant que les rentes ne soient plus la propriété exclusive du participant au régime. Nous croyons que ces réformes répondraient mieux aux besoins nouveaux des familles ontariennes, conformément aux principes qui sous-tendent la Loi de 1986 sur le droit de la famille.

L'introduction de nouvelles règles autorisant souplesse et équité dans la formulation des ententes de partage doit être mesurée par rapport aux responsabilités nouvelles et aux complexités supplémentaires imposées aux administrateurs des régimes et aux autres professionnels qui doivent administrer et faire appliquer les règlements de partage; elle doit aussi faire en sorte que l'administration des réformes puisse se faire de façon pratique. Comme dans le cas des autres réformes des régimes de retraite, il est possible que ceux qui administrent les rentes doivent s'adapter dans une certaine mesure, afin de garantir la mise en place d'un système plus juste pour tous. Nous invitons les parties intéressées à nous communiquer leur opinion sur les aspects techniques et pratiques de ces propositions.

3. Improved Administration and Enhanced Enforcement and Protection

As part of Ontario's continuing commitment to improve the pension system for employers and employees, a number of legislative reforms are being proposed to enhance protection of members' benefits and rights, to increase flexibility for plan sponsors and members, and to lessen the administrative burden of pension plan management. Accompanying these proposed reforms are a number of specific legislative measures intended to increase the effectiveness and efficiency of Ontario's pension regulatory agency, the Pension Commission of Ontario.

The Pension Benefits Act, 1987 reforms provided enhanced benefits for plan members in the areas of vesting, portability and locking-in of benefits, and introduced safeguards to preserve the integrity of pension funds. Experience has indicated, however, that in certain cases further safeguards of rights or benefits are warranted, and some clarification is needed to ensure that the intent of certain provisions of the Act is achieved. In addition, it has become clear that some of the new requirements under the Pension Benefits Act, 1987 have reduced flexibility and created onerous administrative requirements for plan sponsors. The proposed amendments outlined below are aimed at reducing this burden and providing increased flexibility for plan sponsors. Changes are also proposed to enhance benefit entitlement and protection and to improve the ability of the Pension Commission to respond effectively in a changing pension management environment.

In addition, it is noted that many of the provisions in the Pension Benefits Act, 1987 were drafted primarily to apply to defined benefit pension plans which cover the majority of employees who participate in employer-sponsored pension plans in Ontario. (See **Appendix G**). However, at present, more than half the plans registered in Ontario are defined contribution plans, and the Act often inadvertently categorizes such plans as defined benefit plans, simply by not providing separate treatment for defined contribution plans in several areas. **It is therefore proposed that plan sponsors, members and industry professionals be consulted on the issue of the application of the Act to defined contribution plans to ensure that the same protections and flexibility provided for defined benefit plans are also extended, where appropriate, to defined contribution plans.**

INCREASED PROTECTION AND ENHANCEMENT OF BENEFITS

Proposed changes in this area fall into two general groups: enhancement of members' benefits and increased statutory protection of benefit entitlement and security. Highlights of the key proposals follow.

3. Amélioration de l'administration, de la mise en application et de la protection

Le gouvernement de l'Ontario s'est engagé à améliorer le système des régimes de retraite, tant à l'intention des employeurs que des employés, et envisage à cette fin un certain nombre de réformes législatives afin de mieux protéger les prestations et les droits des participants, d'accroître la souplesse du système pour les promoteurs et les participants et d'alléger le fardeau administratif des administrateurs des régimes de retraite. Ces projets de réforme s'accompagnent d'un certain nombre de mesures législatives spécifiques destinées à accroître l'efficacité et l'efficience de l'organisme qui réglemente les régimes de retraite dans la province, à savoir la Commission des régimes de retraite de l'Ontario.

Les nouvelles dispositions de la Loi de 1987 sur les régimes de retraite apportaient des améliorations en ce qui a trait à l'acquisition, à la transférabilité et à l'immobilisation des prestations des participants et introduisaient des mécanismes de sécurité pour protéger l'intégrité des caisses de retraite. Par contre, l'expérience acquise montre qu'il faudrait, dans certains cas, renforcer la sécurité des droits ou des prestations et apporter des éclaircissements pour respecter l'intention de certaines dispositions. De plus, on a constaté que certaines nouvelles exigences de la LRR de 1987 offrent moins de souplesse aux promoteurs des régimes et leur créent des exigences administratives coûteuses. Nous analysons ci-après les amendements envisagés, dont l'objet est de réduire ce fardeau et donner plus de latitude aux promoteurs. Nous envisageons aussi des changements pour améliorer le droit aux prestations et la protection de celles-ci et donner à la Commission des régimes de retraite de meilleurs moyens pour fonctionner efficacement dans un contexte où l'administration des régimes de retraite est en mutation.

En outre, il faut préciser que nombre des dispositions de la Loi de 1987 sur les régimes de retraite visent avant tout les régimes à prestations déterminées, qui regroupent la majorité des employés participant à des régimes d'employeurs en Ontario (voir Annexe G). Cependant, plus de la moitié des régimes enregistrés actuellement en Ontario sont des régimes à cotisations déterminées et, dans la loi, ils sont souvent par inadvertance considérés comme des régimes à prestations déterminées, simplement parce que la loi ne prévoit pas de traitement distinct à leur égard dans plusieurs domaines. **Nous souhaitons donc que les promoteurs, les participants et les spécialistes de l'industrie soient consultés sur la question de l'application de la loi aux régimes à cotisations déterminées, afin que soient élargies à ceux-ci s'il y a lieu, les mêmes mesures de protection et de souplesse accordées aux régimes à prestations déterminées.**

MEILLEURE PROTECTION ET ENRICHISSEMENT DES PRESTATIONS

Les changements proposés dans ce domaine entrent dans deux grands groupes : enrichissement des prestations des participants et meilleure protection statutaire des droits aux prestations et de la sécurité de celles-ci. Les quelques pages qui suivent donnent les points saillants des amendements clés.

50% Value Rule

The Pension Benefits Act, 1987 stipulates that a plan member's contributions and attributable interest cannot be used to provide more than 50% of the value of the pension accrued after December 31, 1986 -- the "50% value rule". However, in cases where the employer wishes to apply the 50% value rule to benefits earned prior to January 1, 1987 to the benefit of members, the Act does not currently allow for a refund of excess contributions to employees. Therefore, **it is proposed to allow plan sponsors to apply the 50% value rule to pre-1987 benefits, and to provide for a refund to members of any excess employee contributions that might result.** However, to ensure that members are treated fairly, **it is proposed that separate calculations be required for pre-1987 and post-1986 benefits in instances where the 50% value rule is applied retroactively.**

Vesting and Benefit Accrual

It is proposed that the Act be clarified to ensure that plan members who meet the vesting requirements under the Act for benefits earned prior to January 1, 1987 are not denied those benefits upon reaching normal retirement date. It is further proposed that there be 100% vesting of benefits earned after December 31, 1986 in the case of plan members who terminate employment on or after normal retirement date, thereby providing automatic vesting rights for older workers who join a pension plan within two years of retirement. In addition, it is proposed that plan members who work beyond normal retirement date be entitled to continue to accrue pension benefits, subject to any plan restrictions on maximum accruals. This would benefit older workers who wish to increase their pension entitlement.

In the case of employees who move within different pension plans of the same employer, **it is proposed that the Act be amended to indicate that such transfers will not operate to increase the statutory qualification periods for vesting.**

Waiver of Portability Rights

Some pension plans provide an option whereby, prior to termination of employment, a member may elect to apply all or part of the accumulated value of his or her benefits toward the purchase of a deferred annuity from a life insurance company, in order to take advantage of favourable interest rates. However, the current portability rights under the Act, which permit a member to transfer the lump sum value of his or her pension into another retirement vehicle, have resulted in increased costs for insurers to the point where many now refuse to sell deferred annuities. Therefore, **it is proposed to allow a member who is within 15 years of normal retirement date to waive portability rights under the Act when electing to apply all or part of his or her accumulated pension benefits toward the purchase of a deferred annuity from an insurance company.** This would permit the retention of a potential investment option for older plan members.

La règle de la moitié de la valeur

La Loi de 1987 sur les régimes de retraite stipule que les cotisations et l'intérêt imputable ne peuvent servir à offrir plus de la moitié de la valeur de la rente constituée après le 31 décembre 1986, c'est-à-dire la règle de la moitié de la valeur. Actuellement, par contre, la loi n'autorise pas l'employeur qui veut avantager les participants et appliquer cette règle aux prestations acquises avant le 1er janvier 1987, à rembourser aux employés leurs cotisations excédentaires. En conséquence, **nous voulons autoriser les promoteurs à appliquer la règle de la moitié de la valeur aux prestations antérieures à 1987, avec remboursement aux participants des cotisations versées en trop par les employés, s'il y a lieu.** Par contre, afin que les participants soient traités équitablement, **si la règle de la moitié de la valeur est appliquée rétroactivement, il faudrait calculer séparément les prestations antérieures à 1987 et postérieures à 1986.**

Acquisition et constitution des prestations

Il faudrait apporter des éclaircissements à la loi afin que les participants qui répondent aux exigences d'acquisition prévues à la loi à l'égard des prestations acquises avant le 1er janvier 1987 ne soient pas privés de ces prestations à la date normale de départ à la retraite. De plus, **les prestations acquises après le 31 décembre 1986 devraient être entièrement dévolues, dans le cas des participants qui quittent leur emploi à la date normale de la retraite ou plus tard, ce qui équivaudrait à des droits automatiques d'acquisition, pour les travailleurs âgés qui adhèrent à un régime dans les deux années précédant la retraite. En outre, les participants qui continuent à travailler après la date normale de la retraite devraient avoir le droit de continuer à se constituer des prestations de retraite, sous réserve des restrictions imposées par le régime en matière de rente constituée maximale.** Ce serait à l'avantage des travailleurs plus âgés, qui souhaitent enrichir leurs droits de rente.

Dans le cas des employés qui changent de régime tout en restant chez le même employeur, **la loi devrait être modifiée et préciser que ces transferts n'auront pas pour effet de prolonger le délai statutaire d'admissibilité à l'acquisition.**

Renonciation aux droits de transfert

Avant la cessation d'emploi, dans certains régimes, le participant peut décider d'appliquer la totalité ou une partie de la valeur accumulée de ses prestations à l'acquisition d'une rente différée d'une société d'assurance-vie, pour tirer parti de taux d'intérêt favorables. Cependant, les droits de transférabilité prévus à la loi actuelle autorisent le participant à transférer la valeur forfaitaire de sa rente dans un autre régime de retraite, ce qui a entraîné une hausse des coûts des compagnies d'assurance, au point où nombre d'entre elles refusent maintenant de vendre des rentes différées. En conséquence, **nous préconisons d'autoriser le participant qui est à 15 ans ou moins de la date normale de la retraite à renoncer aux droits de transfert prévus à la loi, lorsqu'il choisit d'appliquer la totalité ou une partie des prestations accumulées à l'acquisition d'une rente différée auprès d'une société d'assurance.** Les participants de longue date conserveraient ainsi une possibilité d'investissement.

Pre-Retirement Death Benefits

Under the current provisions of the Act, if a plan member dies before retirement, the member's spouse or designated beneficiary may be entitled to receive the commuted value of benefits earned after December 31, 1986 in the form of a lump sum, or as an immediate or deferred pension. However, for benefits earned prior to January 1, 1987, there is no requirement to refund the member's contributions to the beneficiary. **It is therefore proposed to expand the provisions governing pre-retirement death benefits to ensure that, as a minimum, the beneficiary receives the contributions made by the plan member prior to January 1, 1987, plus interest, and that the deceased member's spouse or designated beneficiary receives the contributions made after December 31, 1986 (and which have not yet vested), plus interest. It is also proposed that any excess funds arising out of the application of the 50% value rule be added to the post-1986 death benefit that may be payable to the spouse or designated beneficiary.**

Currently, where a spouse who is entitled to a pre-retirement death benefit fails, within the prescribed time, to elect to receive an immediate pension, deferred pension or lump sum amount, the spouse is deemed to have elected to receive an immediate pension. Experience suggests that this can be a difficult financial decision for many spouses to make at the time of loss. **It is proposed, therefore, to change the default option to a deferred pension to provide the spouse with maximum flexibility.** A deferred pension is not subject to immediate taxation, and the spouse may subsequently convert it to an immediate pension.

Waiver of Survivor Benefits

The Pension Benefits Act, 1987, currently provides for a mandatory 60% joint and survivor pension which may be waived by a member only with the consent of the spouse. Certain pension plans, however, provide for alternative forms of joint and survivor pensions, and some allow the unilateral waiver of the benefit by the plan member without the consent of the spouse. This can be confusing for plan members and sponsors, and may also not coincide with the spouse's understanding or expectations. Therefore, in order to allow the parties to effect their intentions and to ensure the protection of spousal rights, **it is proposed that pension plans be allowed to permit the waiver of any joint and survivor benefit on the condition that the spouse's consent be given.** Regulations would govern the acceptable content of any such waiver.

Mercy Provision

Under current provisions of the Act, where a pension plan is wound up and a member of that plan later discovers that he or she has a shortened life expectancy, it is not possible to amend the terminated plan to change the terms of payment of pension benefits to meet the special needs of that member. To facilitate benefit payment changes for these individuals, **it is proposed that terminated plans be deemed to have permitted variations in the terms of payment of pensions to members who have a shortened life expectancy and who have transferred their benefits to a locked-in RRSP.**

Prestations de décès avant la retraite

En vertu des dispositions actuelles de la loi, si le participant meurt avant la retraite, son conjoint ou le bénéficiaire désigné peut avoir droit à la valeur actualisée des prestations acquises après le 31 décembre 1996, sous forme de montant forfaitaire, ou à une rente immédiate ou différée. Cependant, en ce qui a trait aux prestations acquises avant le 1er janvier 1987, le promoteur n'est pas tenu de rembourser les cotisations du participant au bénéficiaire. **Nous proposons donc un élargissement des dispositions régissant les prestations de décès avant la retraite, pour faire en sorte qu'au minimum, le bénéficiaire reçoive les cotisations versées par le participant avant le 1er janvier 1987, en plus des intérêts, et que le conjoint ou le bénéficiaire désigné du participant décédé reçoive les cotisations versées après le 31 décembre 1986 (et non encore acquises), intérêts en sus. De plus, tous les fonds excédentaires découlant de l'application de la règle de la moitié de la valeur devraient être ajoutés aux prestations de décès postérieures à 1986 et qui doivent être servies au conjoint ou au bénéficiaire désigné.**

Actuellement, si le conjoint qui a droit à une prestation de décès avant la retraite néglige, dans le délai prescrit, d'opter pour le versement d'une rente immédiate, d'une rente différée ou d'un montant forfaitaire, il est réputé avoir choisi la rente immédiate. L'expérience nous montre que ce peut être une décision financière difficile pour nombre de conjoints, si la perte de leur compagnon est encore récente. **Nous proposons donc de changer cela pour que le choix implicite soit la rente différée, ce qui offre au conjoint le maximum de souplesse.** La rente différée n'est pas immédiatement imposable et le conjoint peut, par la suite, la convertir en rente immédiate.

Renonciation aux prestations de survivant

Dans sa forme actuelle, la Loi de 1987 sur les régimes de retraite prévoit une rente obligatoire réversible de 60 % à laquelle le participant ne peut renoncer qu'avec le consentement du conjoint. Cependant, dans certains régimes, on offre d'autres formes de rentes réversibles; dans certains autres, on autorise le participant à renoncer unilatéralement à ces prestations. Cela peut porter à confusion, tant chez les participants que chez les promoteurs, et il reste possible que cela ne coïncide pas avec les attentes ou les vues du conjoint. En conséquence, pour permettre aux parties de préciser leurs intentions et protéger les droits du conjoint, **nous souhaitons que les régimes puissent autoriser la renonciation à toute rente réversible si le conjoint donne son consentement.** C'est au règlement qu'il appartiendrait de régir le contenu acceptable de cette renonciation.

Dispositions humanitaires

Dans le cadre des dispositions actuelles de la loi, si un régime de retraite est liquidé et que le participant découvre par la suite que son espérance de vie est brève, il n'est pas possible d'apporter un amendement au régime liquidé pour modifier les conditions de versement des prestations de retraite et répondre aux besoins spéciaux de ce participant. Dans le but de faciliter l'adaptation des prestations pour ces personnes, **nous voudrions que les régimes liquidés soient réputés avoir autorisé des variations dans les conditions de versement des rentes aux participants dont l'espérance de vie est brève et qui ont transféré leurs prestations dans un REER immobilisé.**

Multi-Unit Pension Plans

The Act currently defines Multi-Employer Pension Plans (MEPPs). This definition was designed to include plans established by trade unions in trades where members move from job to job, such that they would not often be able to meet ordinary vesting requirements. As a result, many of the rules governing MEPPs are quite different from those governing other plans. For example, members of MEPPs do not automatically cease membership on termination of employment. There is some uncertainty regarding the existing definition of MEPPs which suggests that certain pension plans could unintentionally fall within the MEPP definition. This inadvertent classification could result in hardship for members of certain pension plans because of the application of rules that were intended for typical, trade-union MEPPs. To clarify this uncertainty and to ensure the protection of plan members' rights, **it is proposed to amend the Act to introduce a definition of "Multi-Unit Pension Plan" to cover those plans which are now unintentionally affected by the MEPP definition and which do not represent typical MEPPs.**

Plan Conversions

In cases where a pension plan is converted (for example, from a defined benefit to a defined contribution plan) it is proposed that the "100% value rule" (which requires that the value of an employee's pension accrued prior to January 1, 1987 be at least equal to the employee's contributions plus interest) and the "50% value rule" be applied at the time of conversion, and that any excess arising under the 50% value rule be refunded to plan members at that time. It is also proposed to add legislative authority under the Act to prescribe regulations governing pension plan conversions to ensure that they are carried out in an appropriate manner without causing unfairness to plan members or plan sponsors.

Transfer of Employment Credits and Assets on Sale of Business

In cases where a business is sold or otherwise disposed of, it is proposed that all employees of the former employer be entitled to receive credit for employment with the former employer for purposes of determining eligibility for membership in the successor employer's pension plan. This provision would strengthen what is already a widespread practice on a voluntary basis. **It is also proposed, that where a business is sold and where pension plan liabilities are transferred to a new plan, plan assets must also be transferred, subject to the prior consent of the Superintendent of Pensions.** This would ensure the security of plan members' and pensioners' benefits.

Superintendent's Orders

To enhance the protection of plan members' rights, the Pension Benefits Act, 1987 conferred new order and appeal responsibilities on the Superintendent of Pensions and the Pension Commission. However, some of these powers overlap and, when combined with notice requirements, restrict the regulator's ability to intervene in a timely manner to protect members' interests. To provide for timely and consistent protective powers, **it is proposed to concentrate**

Régimes multi-syndicaux

La loi comporte une définition des régimes de retraite multi-employeurs (RRME) ou inter-entreprises. Cette définition a été formulée pour regrouper les régimes établis par les syndicats, dans les métiers où les participants passent d'un emploi à l'autre, de sorte qu'ils ne pourraient pratiquement jamais répondre aux exigences normales d'acquisition. En conséquence, nombre des règles régissant les RRME sont assez différentes de celles des autres régimes. À titre d'exemple, les participants des RRME ne deviennent pas automatiquement non-adhérents à la cessation d'emploi. Il existe certaines incertitudes relativement à la définition actuelle des RRME, ce qui laisse supposer que certains régimes de retraite pourraient fortuitement entrer dans cette définition. Cette classification malencontreuse pourrait causer des dommages aux participants de certains régimes, en raison de l'application des règles prévues pour des RRME syndicaux types. Pour dissiper cette incertitude et garantir la protection des droits des participants à ces régimes, **nous préconisons un amendement introduisant à la loi une définition des «régimes de retraite multi-syndicaux» regroupant les régimes qui sont actuellement accidentellement visés par la définition des RRME, sans en être vraiment.**

Conversions de régimes

Si un régime de retraite est converti, par exemple d'un régime à prestations déterminées à un autre à cotisations déterminées, nous proposons que la règle de la valeur entière (selon laquelle la valeur de la rente d'un employé constituée avant le 1er janvier 1987 soit au moins égale aux cotisations de l'employé et aux intérêts) et la règle de la moitié de la valeur soient appliquées au moment de la conversion et que tout excédent résultant de la règle de la moitié de la valeur soit remboursé au participant à ce moment. Nous comptons également ajouter à la loi des pouvoirs législatifs de promulgation de règlements régissant la conversion des régimes de retraite, afin qu'elle se fasse adéquatement, sans injustice pour les participants ou les promoteurs.

Transfert des crédits d'emploi et des éléments d'actif à la vente de l'entreprise

Si une entreprise est vendue ou autrement cédée, nous souhaitons que tous les employés de l'ancien employeur aient le droit de recevoir des crédits à l'égard de leur emploi chez cet employeur, pour le calcul de l'admissibilité à participer au régime de l'employeur subséquent. Cette disposition donnerait plus de force à un usage déjà répandu sur une base volontaire. **De plus, si une entreprise est vendue ou que les charges d'un régime de retraite sont cédées à un nouveau régime, l'actif du régime devrait également être transféré, sous réserve de l'autorisation préalable du Surintendant des régimes de retraite.** Cela garantirait la sécurité des prestations des participants et des retraités du régime.

Ordres du Surintendant

Dans le but de mieux protéger les droits des participants, la Loi de 1987 sur les régimes de retraite confiait au Surintendant et à la Commission des régimes de retraite de nouvelles responsabilités en matière d'ordres et d'appels. Cependant, il y a chevauchement de certains de ces pouvoirs ce qui, ajouté aux dispositions relatives au préavis, restreint la capacité de l'organisme de réglementation d'intervenir à temps pour protéger les intérêts des participants. Pour que les pouvoirs de protection puissent s'exercer à temps et de façon cohérente, **nous comptons réserver au bureau du Surintendant le pouvoir d'émettre des ordonnances, tout en**

the order-making power in the Office of the Superintendent and to eliminate the requirement to issue a "notice of proposal" prior to issuing an order. However, to ensure the fair application of this increased protection, all orders would be appealable to the Pension Commission within 30 days and the Commission would be able to suspend the effect of an order until an appeal had been heard.

To further expedite protection of plan members' benefits, it is proposed that an order of the Superintendent would not, as at present, require quasi-criminal proceedings for enforcement, but could become enforceable by being filed in a court of competent jurisdiction, as if it were a judgment or order of that court. This would be consistent with other Ontario statutes, such as the Loan and Trust Corporations Act, 1987.

Conflict-of-Interest and Removal of Plan Administrator or Trustee

To enhance protection of members' benefits in situations where there may be an extraordinary risk, such as in cases of fraud, it is proposed that the Superintendent of Pensions be authorized to remove a plan administrator or trustee to protect pension assets. Since this power represents a major intervention, the Superintendent would not be able to exercise it unless the Act or regulations had been breached and the administrator or trustee in question had failed to comply with an order to remedy the breach.

The government also proposes to prohibit a receiver or trustee in a bankruptcy from acting as the pension plan administrator of the firm which is in bankruptcy or receivership. It is an inherent conflict to act, or attempt to act, in the interests of both the plan and another party or creditor, such as a financial institution.

INCREASED FLEXIBILITY FOR PLAN SPONSORS

Some of the provisions outlined above for the protection of plan members also have the effect of providing greater flexibility for plan sponsors, such as permitting the retroactive application of the "50% value rule" where plan sponsors choose to do so, and permitting the waiver of portability rights by employees purchasing deferred annuities within 15 years of normal retirement date. In addition, the following reforms are proposed to improve the flexibility of plan design, administration and benefit provision.

Retroactive Plan Amendments

In some circumstances, it may be appropriate to allow amendments that retroactively reduce benefits. For example, in the case of a union-negotiated contract which has the effect of reducing benefits, the parties may agree that the amendment should take effect as of the date the contract was negotiated. It is therefore proposed that an exception be made to the general prohibition of plan amendments which reduce benefits retroactively where the consent of the Superintendent of Pensions, the plan sponsor and the members (or their bargaining agent) is given and where reasonable grounds for doing so exist. However, no such amendments would be permitted to be effective prior to the fiscal year in which application for registration of the amendment is made.

éliminant l'obligation de publier un «avis d'intention» avant d'envoyer un ordre. Cependant, pour que cette protection accrue soit appliquée de façon juste, tous les ordres pourront faire l'objet d'un appel à la Commission des régimes de retraite, dans les 30 jours, et cette Commission aurait le pouvoir de suspendre l'exécution de l'ordre jusqu'à l'audition de l'appel.

Pour veiller davantage à protéger promptement les participants, l'ordre du Surintendant n'exigerait plus, pour être mis en application, des procédures quasi-pénales (c'est le cas actuellement), mais pourrait prendre effet en étant remis à un tribunal de juridiction compétente, comme s'il y avait jugement ou décision de ce tribunal. Cela serait conforme à d'autres lois de l'Ontario, par exemple la Loi de 1987 sur les compagnies de prêt et de fiducie.

Conflits d'intérêt et destitution des administrateurs ou des fiduciaires du régime

Afin de mieux protéger les prestations des participants, dans les situations de risque potentiel extraordinaire, par exemple en cas de fraude, nous envisageons d'autoriser le Surintendant des régimes de retraite à destituer un administrateur de régime ou un fiduciaire, afin de protéger l'actif des rentes. Puisque ce pouvoir est une intervention majeure, le Surintendant ne pourra l'exercer que s'il y a eu infraction à la loi ou au règlement et que l'administrateur ou le fiduciaire visé ne s'est pas conformé à l'ordre de corriger le manquement.

Le gouvernement souhaite de plus interdire à un séquestre ou syndic d'agir à titre d'administrateur du régime de l'entreprise en faillite ou sous séquestre. Quiconque agit ou essaie d'agir à la fois dans les intérêts du régime et d'une autre partie ou d'un créditeur, par exemple une institution financière, se place implicitement en conflit d'intérêt.

LATITUDE ACCRUE POUR LES PROMOTEURS

Certaines des dispositions qui précèdent visent à protéger les participants, mais elles ont aussi pour résultat de donner plus de latitude aux promoteurs, par exemple en les autorisant à appliquer s'ils le désirent, de façon rétroactive, la règle de la moitié de la valeur, et en permettant aux employés qui acquièrent des rentes différées dans les 15 années précédant la date normale de la retraite de renoncer au droit de transférabilité. De plus, les réformes décrites ci-après visent à donner plus de souplesse au régime, sous le rapport de la conception, de l'administration et du versement des prestations.

Modifications rétroactives au régime

Dans certains cas, il y aurait lieu d'autoriser des modifications réduisant rétroactivement les prestations. Prenons comme exemple un contrat négocié par un syndicat et qui entraîne une baisse des prestations : les parties peuvent convenir que la modification doit entrer en vigueur à la date où le contrat a été négocié. Nous formulons donc une exception à l'interdiction générale d'apporter des modifications réduisant rétroactivement les prestations, s'il y a accord du Surintendant des régimes de retraite, du promoteur et des participants (ou de leur agent négociateur), et des motifs raisonnables de le faire. Cependant, ces modifications ne doivent pas entrer en vigueur avant l'exercice où la demande d'enregistrement de l'amendement est présentée.

Transfer Out of Small Sums

The Act currently allows the cashing out of benefits which fall below 2% of the current Canada Pension Plan Year's Maximum Pensionable Earnings (YMPE). However, in many cases, the benefit payable at retirement is higher than this level, and plan sponsors must therefore administer deferred pensions which have a very small value relative to the administration costs, often for a period of years. Therefore, **it is proposed that the current 2% of YMPE level be raised to 4%, and that alternative bases for cashing out be provided in the Regulations.**

It is also proposed to allow benefits falling below the new maximum permitted levels to be transferred out of a pension fund by a plan sponsor with or without the consent of the plan member. In addition, it is proposed that terminated plans be deemed to have permitted the cashing out of small benefits falling below the maximum permitted levels, so as to allow former members who have transferred small benefits to a locked-in RRSP to cash them out.

Access to Plan Documents

To ensure fair and effective disclosure **it is proposed that the current list of persons entitled to obtain access to certain pension plan documents from a plan administrator or from the Pension Commission be expanded. The new list would include an employer, administrator, former spouse of a member or former member, participating employer of a Multi-Employer Pension Plan or Multi-Unit Pension Plan, receiver, liquidator, or trustee in bankruptcy.**

ALLEVIATION OF ADMINISTRATIVE BURDEN

The increased administrative responsibilities established by the Pension Benefits Act, 1987 reforms have been cause for concern among many plan sponsors. The following proposals are intended to reduce some of the burden imposed by these reforms, while retaining the integrity of the pension plan and protecting members' interests.

Single Corporate Plan Administrator

In order to alleviate certain administrative difficulties **in the case of related corporate employers whose employees all belong to the same pension plan, it is proposed to allow for the designation of a single plan administrator in such cases.**

Refunds of Overpayments and Employee Contributions

Currently the Act requires that an application by an employer for the return of an overpayment made to a pension fund be made within the fiscal year in which the overpayment occurred. However, the overpayment may not be discovered until after fiscal year end, especially since payments must be made monthly, based on actuarial reports provided every three years. Further, Revenue Canada rules currently prohibit tax deductions for payments made to a pension fund beyond maximum permitted levels. Therefore, **it is proposed to extend the**

Retrait de petits montants

La loi autorise actuellement le versement en espèces des prestations inférieures à 2 % du maximum actuel des gains annuels ouvrant droit à pension (MGAP) du Régime de pensions du Canada. Cependant, bien souvent, la prestation payable à la retraite est plus élevée que cela et les promoteurs doivent donc administrer, souvent pendant plusieurs années, des rentes différées dont la valeur est très modeste, comparativement aux frais d'administration. Nous voulons donc que le pourcentage actuel, soit 2 % du MGAP, soit relevé à 4 %, et que le règlement fasse état d'autres mécanismes pour monnayer les rentes.

Nous souhaitons aussi que le promoteur, avec ou sans le consentement du participant, soit autorisé à transférer hors de la caisse de retraite les prestations inférieures aux nouveaux maximums permis. De plus, les régimes liquidés devraient être réputés avoir autorisé le retrait des petites prestations inférieures aux niveaux maximums permis, de façon que les anciens participants qui ont transféré leurs petites rentes dans un REER immobilisé puissent les monnayer.

Accès aux documents du régime

Dans le but de garantir une divulgation juste et efficace, la liste actuelle de personnes qui ont droit d'accès à certains documents du régime de retraite confiés à l'administrateur du régime ou à la Commission des régimes de retraite devrait être élargie de façon à y inclure un employeur, un administrateur, l'ancien conjoint d'un participant ou d'un ex-cotisant, un employeur participant à un régime multi-employeurs ou multi-syndical, un séquestre, liquidateur ou syndic.

ALLÈGEMENT DU FARDEAU ADMINISTRATIF

Les responsabilités administratives accrues dues aux réformes introduites par la Loi de 1987 sur les régimes de retraite ont causé du souci à nombre de promoteurs. Les projets qui suivent devraient alléger en partie le fardeau imposé par ces réformes, tout en maintenant l'intégrité du régime et en protégeant les intérêts des participants.

Administrateur unique de régime d'entreprise

Dans le but de régler certaines difficultés administratives, dans le cas de sociétés-employeurs apparentées dont les employés appartiennent tous au même régime de retraite, nous envisageons d'autoriser la désignation d'un seul responsable du régime.

Remboursement des paiements excédentaires et des cotisations des employés

La loi exige actuellement que l'employeur qui veut rembourser un plus-payé versé à une caisse de retraite en fasse la demande au cours de l'exercice où le paiement excédentaire a eu lieu. Cependant, il se peut que le trop-payé ne soit découvert qu'à la fin de l'exercice, surtout en raison du fait que les versements doivent être effectués mensuellement, d'après les rapports actuariels remis aux trois ans. De plus, les règles actuelles de Revenu Canada interdisent les déductions à l'égard des versements effectués à une caisse de retraite au-delà des niveaux maximaux autorisés. Voilà pourquoi nous souhaitons prolonger la période de demande à trois mois suivant la fin de l'exercice, afin que les promoteurs aient un délai raisonnable pour

application period to three months following the fiscal year end, in order to allow plan sponsors a reasonable period of time to discover and apply for a return of overpayments for that fiscal year. It is also proposed that the Superintendent of Pensions be empowered to consent to such returns of overpayments, subject to appeal to the Pension Commission, to facilitate the response to such applications.

In addition, it is proposed that the Superintendent of Pensions be authorized to consent to refunds of employee contributions, subject to appeal to the Pension Commission.

Guaranteed Annuity Contracts

Prior to the recent reforms of the Pension Benefits Act, 1987, many employers provided pensions by way of guaranteed annuity contracts (GACs) purchased from a life insurance company. These retirement savings vehicles allowed employers to fix their costs, provide a guaranteed pension to employees, and leave the administrative responsibilities to the insurance company. However, the new portability and interest provisions of the Act now require employers who had purchased GACs for their employees to provide additional funding which was not contemplated at the time of purchase, resulting in the employee receiving more than was agreed upon or intended when the GAC was entered into. It is therefore proposed to exempt pensions provided by way of GACs purchased prior to the effective date of the amended Act from the portability and interest crediting provisions of the Act. GACs purchased after the effective date, however, would have to meet the standards set out in the Act.

Pension Commission Procedures

A number of proposed amendments related to the administrative procedures of the Pension Commission would also have an impact on the administrative requirements of plan sponsors. In particular, it is proposed that the Commission set its own procedures in the interest of reducing the time required for cases. The Commission would also be authorized to issue "practice notes" to the professional community that traditionally appears before it, to convey the changed procedures.

Reference Hearings

It is proposed that the Commission be authorized to hold reference hearings. The purpose of these reference hearings would be to reduce appeals, to give direction to parties negotiating the pension aspects of collective agreements, and to avoid unnecessary expenditures on actuarial and legal fees. Reference hearings would be sought where a party, on notice to all other parties, requests a ruling on whether a contemplated action, such as an investment decision, is permitted under the Act. Reference hearing decisions would be paid for by the parties requesting them and would be based on particular facts. These decisions would be binding on the Commission unless the facts change.

découvrir le trop-payé et formuler une demande de remboursement à l'égard de cet exercice. Une disposition corollaire serait de conférer au Surintendant des régimes de retraite le pouvoir d'autoriser ces remboursements de cotisations versées en trop, sous réserve d'un appel à la Commission des régimes de retraite, pour faciliter la réponse à ces demandes.

En outre, nous comptons autoriser le Surintendant des régimes de retraite à donner son aval aux remboursements de cotisations aux employés, sous réserve d'un appel à la Commission des régimes de retraite.

Contrats de rentes garanties

Avant les réformes introduites par la Loi de 1987 sur les régimes de retraite, nombre d'employeurs offraient des rentes garanties par contrats (CRG) acquis d'une société d'assurance-vie. Grâce à ces régimes d'épargne-retraite, l'employeur pouvait fixer ses coûts, offrir aux employés une rente garantie et laisser les responsabilités administratives à la société d'assurance. Cependant, les nouvelles dispositions de la loi en matière de transférabilité et d'intérêts obligent maintenant les employeurs qui ont acquis pour leurs employés des CRG à y verser des fonds supplémentaires, ce qu'ils n'avaient pas envisagé au moment de l'acquisition, de sorte que les employés reçoivent davantage que ce qui était convenu ou prévu à la signature du contrat de rente. Nous voulons donc exempter des dispositions de transférabilité et de crédits d'intérêt de la loi les rentes fournies par contrats de rentes garanties acquis avant la date d'entrée en vigueur de la loi modifiée. Les CRG achetés après cette date devront par contre se conformer aux normes figurant à la loi.

Modalités de la Commission des régimes de retraite

Un certain nombre de projets d'amendement relatifs aux modalités administratives de la Commission des régimes de retraite auraient également une incidence sur les responsabilités administratives des promoteurs de régimes. Nous souhaitons notamment que la Commission établisse ses propres modalités, afin de réduire les délais nécessaires pour traiter chacun des cas. De plus, la Commission serait autorisée à diffuser des «avis de pratique» aux organismes professionnels qui, habituellement, comparaissent devant elle, afin de leur communiquer les nouvelles modalités.

Audiences de consultation

La Commission devrait être autorisée à tenir des audiences de consultation, dont l'objet serait de réduire le nombre d'appels, de donner des orientations aux parties négociant les aspects des conventions collectives touchant les régimes de retraite et d'éviter les dépenses inutiles en honoraires d'actuaires et d'avocats. Elle tiendrait des audiences de consultation dans les cas où une partie (ayant informé toutes les autres parties) demanderait une décision à savoir si telle mesure envisagée, par exemple une décision d'investissement, est conforme à la loi. Les frais seraient assumés par les parties requérantes et les décisions se fonderaient sur les faits particuliers. Ces décisions lieraient la Commission, à moins que les faits ne changent.

Interpretation Bulletins

It is also proposed that the Superintendent be authorized to issue interpretation bulletins to assist plan administrators in complying with the requirements of the Act. The bulletins would convey the view the Commission or its staff take on a given issue of interpretation of the statute, but not on a given set of facts, and would not be legally binding. These provisions would allow sponsors to make informed and timely decision on matters affecting the administration and governance of pension plans.

Notice to Former Members

At present, the Act requires that notice of events such as a surplus withdrawal from a plan being wound up must be sent to "former members". A former member can include individuals who may have terminated employment 20 years ago and whose deferred pension was used to purchase an annuity with an insurance company. The fact that it is difficult to reach such former members personally imposes an unreasonable administrative burden on plan sponsors. **It is proposed to limit the requirement for personal notice to those former members terminating within the last 5 years, and provide that notice to other plan members be by advertisement.** This 5-year standard would be consistent with the record-keeping requirements of the Ontario Employment Standards Act.

INCREASED EFFICIENCY AND EFFECTIVENESS

The government proposes to rationalize some functions and powers of the Pension Commission to enhance efficiency and effectiveness, and to provide increased responsiveness to pension plan sponsors, members and pension professionals. The proposals to allow the Commission to set its own procedures and to communicate interpretations and reference hearing decisions have been mentioned. Further reforms are outlined below.

Appeals

The requirements of the present Act can delay the final determination of pressing pension disputes by allowing appeals of the Commission's decisions to be made to the courts on matters of fact as well as on matters of law. The courts, moreover, are not always comfortable reviewing technical matters such as actuarial assumptions. For these reasons, **the government proposes to provide the Commission with exclusive jurisdiction in matters of fact, and to reserve appeals on questions of law to the jurisdiction of the courts.** This reform would be consistent with the rules governing other tribunals in Ontario, such as the Ontario Labour Relations Board.

Bulletins d'interprétation

Nous voulons aussi autoriser le Surintendant à publier des bulletins d'interprétation afin d'aider les administrateurs de régimes à se conformer aux exigences de la loi. Ces bulletins transmettraient l'opinion de la Commission ou de son personnel sur certains problèmes d'interprétation de la loi, sans égard aux faits particuliers, et ne comporteraient aucune obligation juridique. Ces dispositions permettraient aux promoteurs de prendre leurs décisions de façon opportune et en connaissance de cause, sur des questions d'administration et de régie des régimes de retraite.

Avis aux anciens participants

Actuellement, la loi exige que les anciens participants soient mis au courant de certains événements, par exemple le retrait de l'excédent à la liquidation d'un régime. Ces ex-participants peuvent être des personnes qui ont quitté leur emploi il y a 20 ans et dont la rente différée a servi à acquérir une rente auprès d'une société d'assurance. La difficulté de rejoindre directement ces anciens participants impose aux promoteurs de régimes un fardeau administratif déraisonnable. En vertu du projet d'amendement, **l'obligation de servir un avis personnel serait restreint aux anciens participants qui ont quitté leur emploi au cours des cinq dernières années, avec avis aux autres au moyen d'une annonce.** Cette règle serait conforme aux exigences de tenue de livres de la Loi sur les normes d'emploi de l'Ontario.

EFFICACITÉ ET EFFICIENCE ACCRUES

Le gouvernement compte rationaliser certaines fonctions et certains pouvoirs de la Commission des régimes de retraite pour en augmenter l'efficacité et l'efficience et mieux répondre aux promoteurs et aux participants des régimes de retraite, ainsi qu'aux spécialistes de ce domaine. Nous avons traité des propositions visant à autoriser la Commission à établir ses propres modalités et à communiquer des interprétations et des décisions d'audiences de consultation. Les paragraphes qui suivent portent sur d'autres réformes.

Appels

Les règles formulées à la loi actuelle peuvent retarder le règlement définitif de litiges urgents en matière de régimes de retraite, car elles permettent aux parties d'en appeler des décisions de la Commission devant les tribunaux, sur des points de fait ou de droit. De plus, les tribunaux ne sont pas toujours en terrain familier, lorsqu'on leur demande d'étudier des questions aussi techniques que les hypothèses actuarielles. Voilà pourquoi **le gouvernement entend accorder compétence exclusive à la Commission sur les points de fait, pour réserver le recours aux tribunaux aux points de droit.** Cette réforme serait conforme aux règles régissant les autres tribunaux ontariens, par exemple la Commission des relations de travail de l'Ontario.

Application of the Statutory Powers Procedure Act

To clarify the legal and procedural duties of the Pension Commission, **it is proposed that the Pension Benefits Act, 1987 be amended to apply the Statutory Powers Procedure Act to all hearings and references of the Commission in a consistent manner.** However, that Act need not apply to actions of the Superintendent that are appealable to the Pension Commission.

Pre-Designation of Parties to Hearings

At present, the Pension Commission of Ontario is required to hold a hearing in order to designate classes of parties that may appear before it. To expedite the hearing process, **it is proposed to pre-designate classes of parties to a hearing in the Act.** The proposed classes would include the plan sponsor, the plan administrator, the plan trustee, the trade union, each individual plan member not represented by a union, and the Superintendent of Pensions. The Commission would retain the power to designate other parties.

Fees for Hearings

The Pension Benefits Act, 1987 currently provides for the levying of certain administrative fees on employer-sponsored pension plans, on a user-basis. To reinforce the self-financing status of the Pension Commission, **the government proposes to provide for the levying of fees for hearings, references and surplus withdrawals.** These activities have proved to be expensive and, in some instances, the right to a hearing has been abused. The imposition of fees can serve to deter frivolous appeals, but to ensure that it does not result in preventing legitimate groups from having access to the Commission because of their inability to pay, **the government also proposes to accord the Commission the discretion to waive fees when cases warrant.**

Cost Awards

It is also proposed to authorize the Commission to award costs in cases where the group in question might have been deterred from an appeal because of its inability to pay - a pensioners' group, for example - and to award interest to compensate for interest lost during the appeal period, in similar cases, where warranted. A broad cost power, appropriate to a tribunal, will be provided.

Application de la Loi sur l'exercice des compétences légales

Dans le but de préciser les devoirs juridiques et administratifs de la Commission des régimes de retraite, **nous préconisons un amendement à la Loi de 1987 sur les régimes de retraite afin que s'appliquent de façon cohérente à toutes les audiences et consultations de la Commission les dispositions de la Loi sur l'exercice des compétences légales.** Par contre, il ne sera pas obligatoire de l'appliquer aux interventions du Surintendant qui peuvent faire l'objet d'un appel devant la Commission.

Désignation préalable des parties aux audiences

Actuellement, la Commission des régimes de retraite de l'Ontario doit tenir une audience pour désigner les catégories d'intervenants qui peuvent comparaître devant elle. Afin d'accélérer le mécanisme d'audience, **les catégories de parties à une audience devraient être désignées au préalable dans la loi.** Voici les catégories proposées : le promoteur du régime, l'administrateur du régime, le fiduciaire du régime, le syndicat, chaque participant non représenté par un syndicat, ainsi que le Surintendant des régimes de retraite. La Commission conserverait le pouvoir de désigner d'autres parties.

Frais d'audience

La Loi de 1987 sur les régimes de retraite permet d'imposer certains frais d'administration aux régimes d'employeurs, sur une base d'utilisation. Pour rendre financièrement encore plus autonome la Commission des régimes de retraite, **le gouvernement compte l'autoriser à percevoir des honoraires pour les audiences, les consultations et les retraits d'excédents.** Ces activités se sont avérées coûteuses et, dans certains cas, on a abusé du droit d'audience. C'est un moyen de dissuasion qui peut permettre de prévenir les appels injustifiés; par contre, pour s'assurer que cela n'empêche pas les groupes légitimes d'avoir accès aux services de la Commission par incapacité de payer, **le gouvernement compte aussi accorder à cette Commission le pouvoir discrétionnaire de renoncer à ces honoraires si le cas le justifie.**

Adjudication des coûts

Nous voulons également autoriser la Commission à adjuger les coûts, si un groupe a été dissuadé de loger un appel en raison de son incapacité de payer, par exemple un groupe de retraités, et à imposer des dommages-intérêts afin de compenser les intérêts perdus pendant la période d'appel dans les cas analogues, si cela est justifié. Nous définirons de larges pouvoirs d'établissement des coûts, ainsi qu'il sied à un tribunal.

CLARIFYING AMENDMENTS

To ensure the effective application of the Act, amendments are also proposed to clarify certain provisions which have been identified as ambiguous and to provide for clearer direction to plan sponsors, members and industry professionals. **Definitions will be added for the terms "benefit" and "termination" (in relation to a pension plan). "Actuarial present value" will replace "commuted value" where necessary to ensure the accurate application of the latter term. Existing definitions of "additional voluntary contribution", "partial wind up", "wind up" and "pension benefit" will also be clarified. It is also proposed that other provisions of the Act be amended to clarify the following points:**

- prohibit the backdating of adverse amendments;

- reduce disparities between pension plans for part-time and full-time employees;

- ensure that former members and their spouses have the same opportunity to waive pre-retirement death benefits as do members and their spouses;

- permit interest on refunds of employee contributions;

- allow for earlier locking-in of benefits where earlier vesting applies;

- protect future pension benefits, as well as current pension benefits, from assignment or mortgaging, or from being used as security;

- ensure proper application of the 100% value rule which requires that the value of an employee's pension accrued prior to January 1, 1987 at least equal the employee's contributions plus interest;

- clarify the authority of the Pension Commission of Ontario to deal with the federal government on pension matters.

In addition, it is proposed that interpretation bulletins be issued to clarify existing problems concerning interpretation of the concepts of "gradual and uniform accrual" and "class" of employees.

AMENDEMENTS EXPLICATIFS

Dans le but de garantir l'application efficace de la loi, nous envisageons aussi des amendements apportant des éclaircissements à certaines dispositions jugées ambiguës et des directives plus précises aux promoteurs et aux participants des régimes, ainsi qu'aux spécialistes de l'industrie. Nous ajouterons des définitions des termes «prestation» et «cessation» (dans le cas d'un régime de retraite). Le terme «valeur actuarielle actuelle» remplacera «valeur actualisée» là où il le faut pour garantir l'application précise de ce dernier terme. De plus, nous apporterons des éclaircissements aux définitions actuelles des termes «cotisation volontaire supplémentaire», «liquidation partielle», «liquidation» et «prestation de retraite». Nous entendons aussi modifier d'autres dispositions de la loi pour préciser les points suivants :

- interdire l'effet rétroactif des amendements défavorables;

- réduire les inégalités entre les régimes de retraite des employés à temps partiel et ceux des travailleurs à plein temps;

- veiller à ce que les anciens participants et leurs conjoints aient la même possibilité que les participants actuels et leurs conjoints de renoncer aux prestations de décès avant la retraite;

- autoriser l'accumulation d'intérêts sur les remboursements de cotisations aux employés;

- permettre l'immobilisation plus hâtive des prestations, si l'acquisition intervient plus tôt;

- faire en sorte que les prestations futures et actuelles ne puissent être cédées, hypothéquées ou utilisées en garantie;

- veiller à une application adéquate de la règle de la valeur entière voulant que la valeur de la rente d'un employé, constituée avant le 1er janvier 1987, soit au moins égale à ses cotisations et aux intérêts;

- préciser les pouvoirs de la Commission des régimes de retraite de l'Ontario de traiter avec le gouvernement fédéral en matière de régimes de retraite.

De plus, nous comptons publier des bulletins d'interprétation apportant des éclaircissements sur les problèmes actuels d'interprétation des concepts de «constitution graduelle et uniforme» et de «catégorie» d'employés.

4. Solvency Valuation

Prior to the proclamation of the Pension Benefits Act, 1987, funding of pension benefits was only required on a "going concern" or continuing basis (i.e., they were funded as though the plan was continuing and not wound up). Plans which were not fully funded on a going concern basis were required to become fully funded through payments spread over a period of up to 15 years. Under this funding requirement, some pension plans were then unable to cover the cost of accrued benefits that were to be funded in future years when voluntary wind-ups or insolvencies took place.

To improve funding standards and to provide an early warning for potential funding deficiencies that could jeopardize the security of employees' benefits, the regulations to the Pension Benefits Act, 1987 introduced a requirement for all plans to be valued on a "solvency" or "wind-up" basis as well as a going concern basis. Under a solvency or wind-up valuation, the plan actuary calculates liabilities assuming that the plan is wound-up on the date of the valuation. Any funding deficiencies calculated on a solvency basis must be paid off more quickly, over a 5-year period, rather than over the 15-year period allowed for funding deficiencies on an ongoing basis.

The solvency valuation requirement is a Canadian Association of Pension Supervisory Authorities (CAPSA) consensus pension reform item which has been adopted by other Canadian jurisdictions with private pension legislation. However, in the past year a number of problems have arisen with regard to the specific solvency valuation requirements under Ontario's legislation which may affect the ability of some defined benefit plans to maintain and negotiate benefit improvements sought by plan members and favoured by plan sponsors.

PROBLEMS RELATED TO ENHANCED WIND-UP BENEFITS

Although other jurisdictions in Canada have adopted the solvency valuation requirement, Ontario is the only jurisdiction in Canada which requires the provision of enhanced benefit entitlements on the wind-up of a pension plan. Ontario is also the only jurisdiction which provides for automatic or "deemed" employer consent to ancillary benefits. These enhanced wind-up benefits must be valued and funded on a solvency basis, and for this reason the impact of the solvency valuation rule has been more significant in Ontario than in other provinces.

The original intent of the provisions granting employees additional entitlement to benefits in the event of a plan wind-up was to provide more assistance to older members with long service records, (those aged 45 and over with more than 10 years of service), who may experience difficulties in finding new employment in the event of a plant closure. Prior to the Pension Benefits Act, 1987 reforms, the Act provided that a plan member aged 45 with 10 years of service was entitled to receive a pension. The new rule gives enhanced wind-up benefits to any member whose age and service equals at least 55. It is possible under this rule, even for

4. Évaluation de solvabilité

Avant la proclamation de la Loi de 1987 sur les régimes de retraite, l'obligation de provisionner les prestations de retraite se faisait uniquement selon le principe de la continuité d'exploitation, c'est-à-dire comme si le régime était permanent, non liquidé. Les régimes non entièrement provisionnés sur ce principe devaient, sur une période pouvant aller jusqu'à 15 ans, être entièrement provisionnés au moyen de versements échelonnés, de sorte que certains régimes, en cas de cessation (liquidation volontaire) ou d'insolvabilité, ont été incapables de couvrir le coût des prestations constituées qui devaient être capitalisées dans les années futures.

Dans le but de relever les normes de provisionnement et de connaître assez tôt les risques de déficit de provisionnement pouvant compromettre la sécurité des prestations des employés, le règlement accompagnant la Loi de 1987 sur les régimes de retraite exigeait que tous les régimes fassent l'objet d'une évaluation «de solvabilité» ou «de liquidation», aussi bien que de continuité d'exploitation. Dans une évaluation de solvabilité ou de liquidation, l'actuaire du régime calcule les charges (le passif) en posant l'hypothèse de la liquidation du régime à la date de l'évaluation. Tout déficit de provisionnement déterminé sur une base de solvabilité doit être régularisé plus rapidement, sur cinq ans, plutôt que sur les 15 années autorisées pour provisionner le déficit en continuité d'exploitation.

La règle de l'évaluation de solvabilité est l'un des points figurant au document Consensus for Pension Reform de l'Association canadienne des organismes de contrôle des régimes de retraite (ACOR) adopté par d'autres paliers de compétence canadiens qui se sont dotés de lois sur les régimes privés. Cependant, au cours de l'année écoulée, un certain nombre de problèmes ont surgi, qui touchent les exigences particulières d'évaluation de solvabilité figurant à la législation ontarienne et peuvent réduire la capacité de certains régimes à prestations déterminées de maintenir et de négocier les enrichissements de prestations souhaités par les participants et favorisés par les promoteurs.

PROBLÈMES LIÉS À L'ENRICHISSEMENT DES PRESTATIONS DE LIQUIDATION

Même si d'autres compétences canadiennes ont adopté la règle de l'évaluation de solvabilité, l'Ontario est la seule au pays qui exige l'enrichissement des droits aux prestations, à la liquidation d'un régime. Elle est également la seule qui a adopté des dispositions sur le consentement automatique ou «implicite» de l'employeur à l'égard des avantages accessoires. Ces prestations enrichies de liquidation doivent être évaluées et provisionnées «en solvabilité» et c'est pourquoi la règle de l'évaluation de solvabilité a eu une incidence plus grande en Ontario que dans les autres provinces.

L'objet initial des dispositions accordant aux employés des droits supplémentaires aux prestations en cas de liquidation d'un régime était d'aider davantage les membres plus âgés ayant de longs états de service (les personnes qui ont au moins 45 et 10 années de service), qui pourraient avoir de la difficulté à trouver un nouvel emploi, en cas de fermeture de leur établissement. Avant les réformes, la loi stipulait qu'un participant de 45 ans ayant 10 années de service avait le droit de recevoir une rente de retraite. La nouvelle règle accorde des prestations enrichies de liquidation à tout participant dont l'âge et les années de service

members in their thirties to be entitled to greatly enhanced benefits in the event of a plan wind-up. A 37 year old employee who has worked for the same company since age 18, for example, could be eligible for an enhanced pension under the "55-rule".

In conjunction with the expansion of coverage to younger, long-service worker members, the Act also provides that where employer consent was previously required to receive a benefit, the employer's consent shall be automatically assumed or "deemed" to be given. For example, a company's pension plan may have a clause which provides for an unreduced pension benefit plus a bridging benefit for employees who retire at age 55 with 10 years of service. The bridging benefit would run to the age at which the employee would normally be entitled to Canada Pension Plan and Old Age Security benefits. Bridging benefits are usually included in pension plans to accommodate special circumstances such as situations where an employer chooses to allow an employee to retire early, for health or other special reasons. For this reason, enhanced early retirement benefits usually require the consent of the employer.

In most cases, these enhanced benefits are consented to if the eligibility criteria have been met. In the event of a plan wind-up, however, companies may be reluctant to consent to extend these benefits to their entire workforce. The Pension Benefits Act, 1987 protects employees in a wind-up situation by deeming employer consent to such ancillary benefits to all employees who meet the eligibility requirements for these benefits. However, in the process of legislative consideration this special treatment was inadvertently extended to employees who do not meet the eligibility requirements for deemed consent. The effect is that even young employees can become entitled to these benefits even though they have not met eligibility requirements. At the same time, these employees may have found employment elsewhere and joined other pension plans.

The combination of these changes significantly increases the potential wind-up cost which must be funded under the solvency valuation requirements. The value of benefits payable to a single member, who meets the 55-rule on a plan wind-up, for example, can increase by many times because of the Pension Benefit Act, 1987 changes. For some plan sponsors the total cost of funding solvency deficiencies can be as high as ten times the cost of mandatory pension indexation. Funding these shortfalls over a relatively short period of time will not only create a significant funding burden for affected companies, but may impede future negotiation of benefit improvements.

The amounts required to be set aside to fund these large solvency deficiencies, however, may never be required to pay for actual benefits, since the liabilities are contingent on plant closure and plan wind-up -- events which may never come about. As a result many of the affected pension plans may be forced into permanently overfunded positions on a going concern basis. At the same time, these funding requirements have motivated some employers to remove early retirement consent provisions from their plans altogether, which is not to the benefit of plan members.

donnent au moins 55 comme résultat. En vertu de cette règle, même un participant dans la trentaine peut avoir droit à des prestations enrichies considérablement, à la liquidation d'un régime. À titre d'exemple, un employé de 37 ans qui travaille pour la même entreprise depuis l'âge de 18 ans pourrait être admissible à une rente enrichie, en vertu de la règle des 55 ans.

Tout en élargissant l'adhésion aux travailleurs plus jeunes et à longs états de service, la loi stipule aussi que, désormais, le consentement de l'employeur ne sera plus requis, pour recevoir une prestation : son consentement sera automatiquement réputé avoir été donné. À titre d'exemple, supposons que le régime de retraite d'une entreprise comporte une clause prévoyant une prestation de retraite intégrale et une prestation de raccordement pour les employés qui prennent leur retraite à 55 ans avec 10 années de service. Les prestations de raccordement continueraient jusqu'à l'âge auquel l'employé aurait normalement droit aux prestations du Régime de pensions du Canada et de Sécurité de la vieillesse. Ces prestations de transition figurent habituellement dans les régimes de retraite pour prévoir les cas spéciaux, par exemple lorsqu'un employeur décide d'autoriser un employé à prendre une retraite anticipée, pour des raisons de santé ou d'autres motifs spéciaux. Voilà pourquoi il faut habituellement le consentement de l'employeur à l'égard des prestations enrichies de retraite anticipée.

Dans la plupart des cas, ces prestations enrichies sont autorisées si les critères d'admissibilité sont respectés. Cependant, en cas de liquidation d'un régime, il est possible que les entreprises répugnent à accorder ces prestations à tous leurs travailleurs. La Loi de 1987 sur les régimes de retraite protège les employés, s'il y a liquidation, en supposant acquis le consentement de l'employeur à ces avantages accessoires pour tous les employés qui satisfont aux critères d'admissibilité pertinents. Par contre, lors de la refonte de la loi, ce traitement spécial a été par mégarde élargi aux employés qui ne répondent pas aux critères d'admissibilité au consentement présumé. En conséquence, même de jeunes employés peuvent avoir droit à ces prestations sans avoir satisfait aux critères d'admissibilité. De plus, ces employés ont peut-être trouvé de l'emploi ailleurs et adhéré à d'autres régimes.

Pris ensemble, ces changements augmentent considérablement les coûts éventuels de liquidation qui doivent être provisionnés en vertu de la règle de l'évaluation de solvabilité. Ainsi, la valeur des prestations payables à un participant qui répond à la règle des 55 ans lors de la liquidation du régime peut être multipliée par un facteur appréciable, par suite des changements apportés par la Loi de 1987 sur les régimes de retraite. Pour certains promoteurs, le coût total de provisionnement du déficit de solvabilité peut être jusqu'à 10 fois supérieur au coût de l'indexation obligatoire des rentes. Le provisionnement de ces déficits sur une période relativement courte imposera un fardeau financier important aux entreprises touchées et peut même nuire aux futures négociations d'enrichissement des prestations.

Cependant, il est possible qu'on n'ait jamais besoin des montants à réserver au provisionnement de ces importants déficits de solvabilité pour servir les prestations réelles, car ce sont ces charges liées à la fermeture de l'établissement et à la liquidation du régime, éventualités qui pourraient ne jamais se réaliser. Cela revient, nous le verrons plus loin, à obliger nombre des régimes de retraite touchés à être constamment surprovisionnés, par rapport au principe de la continuité d'exploitation. En même temps, ces exigences de provisionnement ont incité certains employeurs à retirer tout simplement de leur régime les clauses autorisant la retraite anticipée, ce qui n'est pas à l'avantage des participants.

PROBLEMS RELATED TO FLAT BENEFIT PLANS

Flat benefit plans provide workers on retirement with a fixed benefit per month multiplied by years of service. For example, if the fixed benefit were $20 per month, for a worker with 20 years of service, the monthly pension would be $400. In most pension plans, funding requirements, as calculated on the basis of solvency valuation, are lower than those calculated on the basis of a going concern valuation. However, for some flat benefit plans, particularly those with generous early retirement benefits and special enriched benefits for plant closure, the solvency valuation requirements have increased funding requirements to exceptional levels.

There are a number of reasons for this cost impact. Many flat benefit plans have generous early retirement benefits and plant closure benefits which create extra solvency liabilities due to the "grow-in" and "deemed consent" provisions.

In addition, flat benefit plans that are part of collective agreements often receive improvements in benefits through labour negotiations when collective bargaining agreements expire. These negotiated benefit increases have the effect of retroactively improving benefits for both retirees and current workers but result in large unfunded liabilities. The impact is unusually sharp in the short term because flat benefit increases are based on fixed cost amounts which are not offset against expected future salary growth, as is the case in final average or other salary-based defined benefit plans.

In recent years, a number of plan sponsors have agreed to a series of substantial retroactive benefit increases. However, some flat benefit plans which negotiated significant benefit increases in 1987 before the new solvency regulations were introduced, will be faced with unexpectedly high solvency deficiency payments. This is a result of the practice of allowing companies to exclude negotiated benefits in valuing liabilities until the year the benefit increases become effective. Rather than funding deficiencies resulting from these increases over the grandfathered 15 years, these companies would have to fund these benefit increases over 5 years when they become effective. Negotiated pension benefit improvements in multi-year contracts would have such an impact on cash flow that companies may not agree to future benefit increases at the same time that they agree to improve other parts of the compensation package. For some companies this could result in an "all or nothing" decision between providing for adjustments in wages and pension improvements.

PROBLÈMES LIÉS AUX RÉGIMES À PRESTATIONS FORFAITAIRES

Dans les régimes à prestations forfaitaires, le travailleur qui prend sa retraite reçoit mensuellement une prestation forfaitaire multipliée par le nombre d'années de service. À titre d'exemple, si la prestation forfaitaire était de 20 $ par mois, la rente mensuelle serait de 400 $, si le travailleur a 20 années de service. Dans la plupart des régimes de retraite, les exigences de provisionnement, calculées selon l'évaluation de solvabilité, seront moins fortes que celles établies sur le principe de la continuité d'exploitation. Cependant, dans certains régimes à prestations forfaitaires, notamment ceux qui offrent des prestations généreuses de retraite anticipée et des prestations spéciales enrichies en cas de fermeture de l'entreprise, les règles de l'évaluation de solvabilité ont porté les exigences de provisionnement à des niveaux exceptionnels.

Cette hausse des coûts a plusieurs causes. Nombre de régimes à prestations forfaitaires offrent des prestations généreuses de retraite anticipée et de fermeture d'entreprise qui entraînent des charges supplémentaires de solvabilité, par suite des dispositions d'«intégration» et de «consentement présumé».

De plus, si ces régimes font partie des conventions collectives, ils bénéficient souvent d'enrichissements des prestations par le mécanisme des négociations périodiques. Ces hausses négociées des prestations ont pour effet d'enrichir rétroactivement les prestations des retraités et des travailleurs actifs, mais elles entraînent un passif non capitalisé considérable. Les répercussions sont anormalement prononcées, à court terme, car les hausses des prestations forfaitaires se fondent sur des montants à coûts fixes non compensés par rapport à la croissance future prévue des salaires, comme c'est le cas dans un régime fin de carrière ou autre régime à prestations déterminées fondées sur la rémunération.

Ces dernières années, de nombreux promoteurs ont accepté une série d'enrichissements rétroactifs importants des prestations. Cependant, certains régimes à prestations forfaitaires qui ont négocié des hausses importantes des prestations, en 1987, avant l'introduction du nouveau règlement sur la solvabilité, devront faire face à des paiements beaucoup plus élevés que prévus en matière de déficit de solvabilité. C'est le résultat de la pratique autorisant les entreprises à exclure les prestations négociées, dans l'évaluation du passif, jusqu'à l'année où les hausses des prestations entrent en vigueur. Plutôt que de provisionner le déficit résultant de ces hausses sur les 15 ans prévus par la clause d'exception, ces entreprises devront financer les hausses de prestations sur cinq ans, lorsqu'elles entreront en vigueur. Dans les contrats portant sur plusieurs années, l'amélioration négociée des prestations de retraite aurait sur la trésorerie des répercussions telles que les entreprises pourraient refuser d'améliorer les prestations futures en même temps que les autres volets du régime d'indemnisation. Dans certaines entreprises, cela pourrait aboutir à une décision «tout ou rien» entre des hausses salariales et l'enrichissement des rentes.

PROPOSED CHANGES

The objective of proposed reforms in relation to solvency valuation is to strike a balance between the setting of realistic funding requirements and the maintenance of an acceptable level of benefit security to protect employee benefits. This balance is reflected in the need to allow for the negotiation of compensation improvements, including retroactive improvements. These proposed changes are intended to maintain the benefits provided to pension plan members in the Pension Benefits Act, 1987 reforms and to reaffirm the basic principle of the solvency valuation.

Clarify Entitlement to Ancillary Benefits on Plan Wind-Up

The current wording of the Pension Benefits Act, 1987 unintentionally extends coverage for deemed employer consent for supplementary benefits to employees who may not meet eligibility requirements but are interpreted to "grow into" these entitlements if the combination of age plus service equals 55. The fact that employers are required to fund these benefits for employees who have not met eligibility requirements has increased costs significantly. This has created an incentive for some employers to remove consent provisions from pension plan agreements, which is not in the interest of employees. **It is proposed that the Act be amended to provide that plan members be deemed to have employer consent for ancillary benefits only if they have met all other eligibility requirements at the date the plan is terminated.** This would be consistent with the original intent of this protection for employees in plan wind-up situations.

Change to Funding of Enhanced Plant Closure Benefits for Solvency Valuation Purposes

Under the current solvency valuation requirement, because it is assumed that a plan is winding up as of the date of valuation, it is assumed that all employees are terminating as of the date of valuation. This assumption activates early retirement benefits available for plant closures in the calculation of solvency liabilities. For plan sponsors who offer enhanced early retirement benefits that exceed the statutory minimum, this results in extremely high funding requirements based on the assumption that all of their plants shut down at once. This has created an unexpectedly severe funding burden on some plans and has required the funding of remote contingency benefits to the detriment of other pension benefits or direct compensation improvements that workers are likely to get.

It is proposed that enhanced pension benefits provided in pension plans that are payable only on plant closure be excluded from solvency valuation requirements under the current regulations. This amendment would only apply to plant closure benefits that are in excess of statutory provisions. Employers would still be responsible to fund statutory benefits for eligible employees on a solvency valuation basis.

MODIFICATIONS ENVISAGÉES

Les réformes mises de l'avant en matière d'évaluation de solvabilité visent un équilibre entre l'établissement d'exigences réalistes de financement et le maintien d'un niveau acceptable de sécurité des prestations, afin de protéger les prestations des employés. C'est un équilibre nécessaire, car il faut laisser la porte ouverte à la négociation d'améliorations (rétroactives comprises) aux régimes d'indemnisation. L'objet des modifications préconisées est de maintenir les avantages offerts aux participants des régimes par les réformes de la Loi de 1987 sur les régimes de retraite et de réaffirmer le principe fondamental de l'évaluation de solvabilité.

Explication du droit aux avantages accessoires à la liquidation

Dans sa formulation actuelle, la Loi de 1987 sur les régimes de retraite élargit fortuitement le consentement présumé de l'employeur à l'égard des prestations supplémentaires aux employés qui ne répondent pas nécessairement aux critères d'admissibilité mais qui sont considérés comme y ayant droit, si le total de l'âge et des années de service donne au moins 55. Les employeurs doivent provisionner ces prestations pour les employés qui ne répondent pas aux critères d'admissibilité, ce qui a provoqué une hausse considérable des coûts et a donné à certains employeurs des motifs d'éliminer les dispositions contractuelles de consentement. Évidemment, cela joue contre l'intérêt des employés. **Nous voulons apporter à la loi un amendement stipulant que les participants n'ont le consentement présumé de l'employeur aux avantages accessoires que s'ils répondent à toutes les autres conditions d'admissibilité à la date de liquidation du régime.** Cette disposition serait conforme au but initial de la mesure : protéger les employés en cas de liquidation d'un régime.

Modifications du provisionnement des prestations enrichies de fermeture d'entreprise aux fins de l'évaluation de solvabilité

En vertu de la règle actuelle d'évaluation de solvabilité, on part du principe que tous les employés quittent leur emploi à la date d'évaluation, car on suppose que le régime sera liquidé à cette date. Cette hypothèse met en vigueur, dans le calcul des charges de solvabilité, les prestations de retraite anticipée prévues en cas de fermeture de l'entreprise. Les promoteurs qui offrent des prestations enrichies de retraite anticipée supérieures au minimum statutaire doivent donc faire face à des exigences de provisionnement extrêmement élevées, car l'actuaire pose l'hypothèse que tous les établissements ferment en même temps. Ces règles ont imposé un fardeau financier lourd et inattendu à certains régimes et ont nécessité le provisionnement des prestations pour éventualités éloignées, au détriment des autres prestations de retraite ou des améliorations au régime d'indemnisation directe que les travailleurs auraient pu obtenir.

Le gouvernement souhaite que les prestations enrichies prévues dans les régimes de retraite et payables uniquement à la fermeture de l'entreprise soient exclues des règles de l'évaluation de solvabilité qui figurent au règlement actuel. Cet amendement s'appliquerait uniquement aux prestations de fermeture d'entreprise dépassant les réserves statutaires. Les employeurs demeureraient responsables de provisionner «en solvabilité» les prestations statutaires des employés admissibles.

Longer Initial Funding Period

It is proposed that the period required to fund the solvency deficiency created by the requirement of deemed consent for ancillary benefits on plan wind-up be extended from 5 to 15 years for initial deficiencies related to benefits effective prior to the proclamation of the Pension Benefits Act, 1987 in January, 1988. Deficiencies related to post-proclamation negotiated benefits when the solvency requirement was known to plan sponsors would be required to be amortized over 5 years.

This measure would decrease the cash flow impact for funding deficiencies by spreading the cost over 15 years for the initial deficiency and would assist in alleviating the initial funding burden for the affected pension plans that agreed to benefit enhancement without having the advantage of the final regulations in relation to solvency valuation requirements. However, it would retain the principle of funding solvency deficiencies on an accelerated basis over the longer term. Any subsequent deficiencies which arise from the proposed amendment outlined above in relation to ancillary benefits on plan wind-up would have to be funded over 5 years.

"Grandfathering" of Future Benefit Increases Negotiated before January 1, 1988

Some pension plans have agreed to provide plan members with benefit improvements increasing for several years in the future. At the time these increases were negotiated, the new solvency valuation regulations had not yet been filed and the Pension Benefits Act, 1987 had not yet been proclaimed. These agreements were based on a 15-year funding assumption. Therefore, **it is proposed that these future benefit increases agreed upon prior to January 1, 1988 should be funded over 15 years. However, benefit enhancements negotiated after January 1, 1988, would have to be funded over 5 years in keeping with the basic solvency valuation requirements.**

Provide for Pre-Funding of Future Solvency Payments

There is some ambiguity regarding plan sponsors' rights to pre-fund solvency valuation deficiencies. Since pre-funding is desirable from the perspective of overall plan funding and benefit security, **it is proposed that the regulations under the Pension Benefits Act, 1987 be clarified to confirm that pre-payments made by a plan sponsor in excess of minimum funding requirements may be used as a dollar-for-dollar offset against future funding obligations for solvency deficiency payments, going concern payments, and other special payments.** This would clarify a practice which is now permitted and encouraged.

Prolongement de la période initiale de provisionnement

Le gouvernement compte porter de 5 à 15 ans la période de provisionnement du déficit initial de solvabilité créé par la règle du consentement présumé aux avantages accessoires à la liquidation du régime, relativement aux prestations en vigueur avant la proclamation de la Loi sur les régimes de retraite en janvier 1988. Les déficits liés aux prestations négociées après la proclamation de la loi, tandis que les promoteurs connaissaient les exigences de solvabilité, devraient être amortis sur cinq ans.

Cette mesure limiterait l'effet des déficits de provisionnement sur la trésorerie en répartissant sur 15 ans le coût du déficit initial et allégerait le fardeau de provisionnement initial des régimes touchés qui ont opté pour un enrichissement des prestations sans l'avantage de connaître les dispositions du règlement définitif sur l'évaluation de solvabilité. Cependant, à long terme, nous conserverions le principe du provisionnement accéléré des déficits de solvabilité. Tout déficit subséquent, découlant du projet d'amendement décrit précédemment et relatif aux avantages accessoires à la liquidation du régime, devrait être capitalisé sur cinq ans.

Exception des hausses des prestations futures négociées avant le 1er janvier 1988

Certains régimes de retraite ont accepté d'accorder à leurs participants des enrichissements de prestations augmentant pendant plusieurs années à venir. Lors de la négociation de ces hausses, le nouveau règlement sur l'évaluation de solvabilité n'avait pas encore été déposé et la Loi de 1987 sur les régimes de retraite n'avait pas encore été sanctionnée. Ces ententes se fondaient sur une hypothèse de provisionnement sur 15 ans. En conséquence, nous voulons que les hausses des prestations futures convenues avant le 1er janvier 1988 soient capitalisées sur 15 ans. Cependant, les enrichissements de prestations négociés après cette date devraient être provisionnés sur cinq ans, conformément aux principes de l'évaluation de solvabilité.

Précapitalisation des versements futurs de solvabilité

Il existe une certaine ambiguïté en ce qui a trait aux droits des promoteurs de régimes de préprovisionner les déficits dus à l'évaluation de solvabilité. La précapitalisation étant souhaitable, eu égard au provisionnement global du régime et à la sécurité des prestations, nous comptons apporter des précisions au règlement de la Loi de 1987 sur les régimes de retraite et de confirmer que les versements anticipés faits par le promoteur au-delà des exigences minimales de provisionnement peuvent être utilisés à parts égales pour réduire les obligations futures de provisionnement, en ce qui a trait aux déficits de solvabilité, à la continuité d'exploitation et autres cas spéciaux. Cet amendement apporterait des éclaircissements sur une pratique maintenant autorisée et encouragée.

Provide for Annual Reports for Underfunded Plans

To ensure adequate monitoring of these funding changes, **it is proposed that pension plans with solvency deficiencies over $1 million, or funded ratios less than 80%, should be required to submit a report on the plan's solvency valuation on an annual basis instead of the standard triennial basis.** This requirement would provide timely information on solvency deficiencies to the Pension Commission of Ontario and to members of the affected plans.

Benefit of Proposed Changes

These proposals attempt to alleviate the funding impact of the solvency valuation requirements by striking a balance between the setting of realistic funding requirements and the maintenance of an acceptable level of benefit security to protect employees. The proposed amendments maintain the principle of solvency valuation as an important protection for pension benefits, but deal with problems associated with unique plan wind-up and plant closure provisions under Ontario pension legislation. It is anticipated that these changes will benefit plan sponsors and current and former members by increasing funding flexibility for further benefit improvements or other compensation package adjustments.

Rapports annuels des régimes sous-provisionnés

Pour exercer une surveillance adéquate de ces changements au niveau du provisionnement, **nous voulons que les régimes dont les charges de solvabilité sont supérieures à un million de dollars ou dont le rapport de capitalisation n'atteint pas 80 % soient tenus de présenter annuellement, et non aux trois ans, un rapport d'évaluation de leur solvabilité.** La Commission des régimes de retraite de l'Ontario et les participants des régimes touchés auraient ainsi des renseignements opportuns sur les déficits de solvabilité.

Avantages des amendements préconisés

Le but de ces projets d'amendements est d'essayer de réduire les effets financiers des règles d'évaluation de solvabilité par un équilibre entre l'établissement de normes réalistes de provisionnement et le maintien d'un niveau acceptable de sécurité des prestations, afin de protéger les employés. Ces amendements respectent le principe selon lequel l'évaluation de solvabilité est un moyen important de protéger les prestations de retraite, mais visent à régler les difficultés liées aux dispositions particulières de la Loi ontarienne sur les régimes de retraite qui touchent les liquidations de régimes et les fermetures d'entreprises. Ces modifications devraient être à l'avantage des promoteurs, des participants actuels et des ex-cotisants, car elles offrent plus de souplesse au niveau du financement, pour favoriser l'enrichissement des prestations ou d'autres améliorations au régime d'indemnisation.

VI. Pension Benefits Guarantee Fund

PENSION FUNDING IN ONTARIO

Effective legislative standards are the primary source of protection for pension benefits. One of the principal objectives of pension legislation in Ontario is to require adequate funding of pension benefits.

The Pension Benefits Act, 1987 introduced a number of provisions which strengthened funding, investment and governance standards, thereby strengthening the security of pension benefits. Among the key features of these reforms were the following specific provisions:

- employers are required to make contributions to the pension fund on a monthly basis (formerly contributions could be made on an annual basis);

- employers are prohibited from taking contribution holidays if the plan has an unfunded liability;

- solvency deficiencies must be paid off over a maximum of 5 years (with certain exceptions);

- the investments of the pension fund must meet standards of prudence;

- the administrator of the pension fund is required to prepare and to review annually a statement of investment objectives and goals;

- conflicts of interest are prohibited;

- pension plans with 50 or more members or assets of $1,000,000 or more must file an auditor's report with the Pension Commission annually;

- transfers of pension assets from one pension fund to another through a sale or merger or the establishment of a new plan are not permitted without the approval of the Superintendent of Pensions.

In addition, the Act provides for greater disclosure of information relating to plan provisions and funding, thereby raising employee awareness of the status of the plan and facilitating monitoring and enforcement:

- plan members are entitled to annual information regarding their benefits, rights and obligations under the plan and must receive written notice of proposed amendments affecting their pension benefits, rights and obligations;

- information relating to plan provisions, administration, financial status, and investment policies and goals must be made available to members on request;

VI. Fonds de garantie des prestations de retraite

PROVISIONNEMENT DES RENTES EN ONTARIO

L'efficacité des normes législatives sur les régimes de retraite, voilà ce qui, avant tout, garantit la sécurité des prestations de retraite. L'un des grands objectifs de la législation sur les régimes de retraite de la province est d'exiger un provisionnement adéquat des prestations.

La Loi de 1987 sur les régimes de retraite a introduit un certain nombre de dispositions resserrant les normes de financement, d'investissement et de régie, d'où une meilleure sécurité des prestations de retraite. Parmi les grands points de ces réformes figuraient certaines dispositions particulières, à savoir :

- l'employeur est tenu de cotiser mensuellement à la caisse de retraite (auparavant, les cotisations pouvaient être annuelles);

- l'employeur ne peut prendre de congé de cotisation s'il y a au régime des charges non capitalisées;

- les déficits de solvabilité doivent être épongés sur cinq ans au maximum (sauf certaines exceptions);

- dans ses investissements, la caisse de retraite doit respecter les normes de prudence;

- l'administrateur de la caisse de retraite est tenu de préparer et de mettre à jour un énoncé annuel des buts et objectifs d'investissement;

- les conflits d'intérêt sont interdits;

- les régimes de retraite d'au moins 50 participants ou d'au moins un million de dollars d'actif doivent présenter chaque année à la Commission un rapport de vérification;

- le transfert de l'actif de rentes d'une caisse de retraite à une autre, par vente, fusion ou création d'un nouveau régime, est interdit sans l'approbation du Surintendant des régimes de retraite.

De plus, la loi exige une plus grande divulgation de l'information relative aux dispositions et au provisionnement du régime, de sorte que les employés en connaissent mieux la situation; cela facilite aussi la surveillance et la mise en application de la loi et du règlement :

- les participants ont le droit de recevoir annuellement des renseignements sur leurs prestations, leurs droits et leurs obligations en vertu du régime et doivent être informés par écrit des projets de modification afférents;

- à la demande des participants, le régime doit leur fournir des renseignements sur les dispositions, l'administration, la situation financière, ainsi que les politiques et objectifs d'investissement du régime;

- members and former members are entitled to establish an advisory committee to monitor, and make recommendations on, the administration of the plan; and

- the Pension Commission of Ontario is entitled to examine any documents or records relating to the pension plan.

In addition to these existing safeguards, it is proposed that plans with significant solvency deficiencies be required to file an actuarial report every year, as opposed to every three years. (See section 4 on Solvency Valuation.)

THE ROLE OF THE PENSION BENEFITS GUARANTEE FUND

While appropriate legislated standards represent the best approach to securing funding of pension plans, Ontario has also had a Pension Benefits Guarantee Fund in place since 1980. This type of fund does not exist in any other Canadian jurisdiction.

The Pension Benefits Guarantee Fund (PBGF) currently provides a minimum level of coverage for selected benefits provided by defined benefit pension plans in the event of plan wind-up where there are unfunded liabilities and the plan sponsor is insolvent. The PBGF was designed as a self-funding program financed through levies paid by sponsors of defined benefit plans. However, if there are insufficient funds in the PBGF to pay claims, the Treasurer may lend funds from the Consolidated Revenue Fund to the PBGF. The PBGF is expected to be in a significant deficit position due to the failure of Massey Combines Corporation.

The PBGF covers statutory pension benefits and some supplementary retirement benefits. Individual coverage is limited to a monthly maximum of $1,000. Certain enriched early retirement benefits and any benefit enhancements in effect for less than three years are excluded from coverage. The value of coverage varies among individual plans based on the level of benefits provided. Sponsor-paid premiums are assessed on a per member basis, and on the basis of the plan's solvency deficiency.

While the PBGF is an additional assurance of pension funding for those who have defined benefit pension plans, recent experience has raised the question whether continuance of such assurance fairly apportions risk of plan failure and is fiscally responsible. The factors in such a consideration are complex and can be affected by a changing economic environment. No firm conclusion has been reached with respect to the PBGF. The following discussion sets out certain options for the purpose of developing a dialogue on this important issue.

DISTRIBUTION OF RISK ON PENSION PLAN FAILURE

The objective of the PBGF is to provide supplementary protection for members of certain employment pension plans in the event that plan assets are insufficient to fund promised benefits on plan wind-up. The coverage of the PBGF applies only to defined benefit plans in the private sector (excluding multi-employer pension plans), which currently account for less than half of Ontario pension plan members, or about 1 in 5 members of the Ontario labour force. In essence, the PBGF transfers the risk of defined benefit pension plan failure from plan

- les participants et les ex-cotisants ont le droit de créer un comité consultatif pour exercer une surveillance et formuler des recommandations sur l'administration du régime; et

- la Commission des régimes de retraite de l'Ontario a droit d'examen sur tout document ou dossier relatif au régime de retraite.

En plus de ces mesures de sécurité, nous voulons que les régimes dont le déficit de solvabilité est important soient tenus de déposer un rapport actuariel chaque année, et non aux trois ans. (Voir la section 4 sur l'Évaluation de solvabilité.)

RÔLE DU FONDS DE GARANTIE DES PRESTATIONS DE RETRAITE

Même si la mise en place de normes législatives appropriées est la meilleure façon de garantir le provisionnement des régimes de retraite, l'Ontario a également, depuis 1980, un Fonds de garantie des prestations de retraite, ce qui n'existe nulle part ailleurs au Canada.

Le Fonds de garantie des prestations de retraite (FGPR) offre actuellement une protection minimale de certaines prestations des régimes à prestations déterminées de l'Ontario, en cas de liquidation, s'il y a des charges non capitalisées et que le promoteur est insolvable. Par sa conception, le FGPR doit s'autofinancer à partir des montants perçus des promoteurs des régimes à prestations déterminées. Cependant, si le FGPR n'a pas les fonds pour faire face aux réclamations, le Trésorier peut lui avancer un prêt à même le Fonds du revenu consolidé. Le FGPR se retrouvera probablement dans une situation déficitaire grave, en raison de l'échec de la Massey Combines Corporation.

Le FGPR couvre les prestations statutaires et certaines prestations supplémentaires de retraite. La protection individuelle est limitée à un maximum mensuel de 1 000 $. Certaines prestations enrichies de retraite anticipée et les enrichissements des prestations en vigueur depuis moins de trois ans sont exclus. La valeur de la protection varie d'un régime à l'autre d'après le niveau des prestations offertes. Les cotisations de l'employeur sont évaluées sur une base individuelle et d'après le déficit de solvabilité du régime.

Bien que le FGPR soit une assurance supplémentaire de provisionnement des rentes des participants des régimes à prestations déterminées, certains faits récents ont soulevé la question de savoir s'il répartit équitablement les risques d'échec des régimes et s'il est financièrement responsable de le maintenir. Les facteurs qui entrent en jeu sont complexes et peuvent changer avec les fluctuations du climat économique. Aucune décision n'a été arrêtée, en ce qui a trait au Fonds. L'analyse qui suit présente certaines possibilités qui devraient susciter le dialogue sur cette question importante.

RÉPARTITION DES RISQUES D'ÉCHEC DES RÉGIMES

Le Fonds de garantie des prestations de retraite vise à offrir une protection supplémentaire aux participants des régimes professionnels, au cas où l'actif du régime ne suffirait pas à financer les prestations promises, à la liquidation. Le FGPR protège donc les régimes à prestations déterminées du secteur privé, qui représentent actuellement moins de 50 % des personnes participant à un régime de retraite, soit moins d'un sur cinq des participants de la main-d'oeuvre. En raison de sa structure, le FGPR transfère le risque d'échec du régime de retraite des participants et ex-cotisants aux participants, aux promoteurs et aux contribuables de

members and former members, to members, sponsors and to Ontario taxpayers, most of whom either do not have employment pension plans or have employment pension plans which are not covered by the PBGF. Accordingly, it can be argued that Ontario taxpayers should not be sharing the financial risk associated with the insolvency of such a pension plan, especially in view of the relatively favourable position of pension plan members compared with those who are not members of employment pension plans.

FISCAL CONSIDERATIONS

The problems associated with exposing taxpayers to the costs of covering the risk of pension payment default are exacerbated by the fact that the potential PBGF liability can only be estimated with a high degree of uncertainty. Total PBGF liability is dependent on the rate of plan wind-ups occurring where the plan sponsor is insolvent and unable to fund deficiencies of the plan at the date of wind-up.

On plan wind-up, a funding deficiency may arise for a number of reasons. Benefit increases granted under the plan may not have been fully amortized or investment returns may have changed unexpectedly, so that benefits are not fully funded by the date of the plan wind-up. In some situations future benefit improvements may have been negotiated, but have not yet been incorporated into the pension documents. In other cases, the plan sponsor may lack the financial resources to continue to support the pension fund or may fraudulently withhold payments to the pension plan.

The risk of pension wind-ups may also be related to individual corporate difficulties, sectoral downturns, or a decline in overall economic conditions (which could affect both corporate and pension investment performance). The occurrence and magnitude of any of these circumstances cannot be predicted with a meaningful degree of certainty. As a result, potential annual claims on the PBGF may be many times higher than PBGF assets at any given time.

CHOICES FOR THE FUTURE OF THE PENSION BENEFITS GUARANTEE FUND

There is a risk that the PBGF will lack sufficient funds to meet current and future liabilities and that its potential liabilities cannot be known with certainty. As a result, the government is considering whether to maintain the Pension Benefits Guarantee Fund, possibly on a restructured basis designed to balance the potential liabilities and Fund assets, or whether to eliminate the Fund and strengthen the responsibilities of plan sponsors and plan members to provide for protection of benefits. Two of the possible options are discussed below.

Restructuring the Pension Benefits Guarantee Fund: An Option

If the PBGF were to be maintained, it would be necessary to restructure both the premium and payout mechanisms to ensure that the Fund would operate on a self-funded basis. The principal features of a restructuring would be to limit or reduce payments made on PBGF claims and to enhance premiums paid into the Fund.

l'Ontario et, pour la plupart, ceux-ci n'ont pas de régime professionnel ou en ont un non protégé par le Fonds. En conséquence, on peut conclure que la collectivité des contribuables de l'Ontario ne devrait pas partager le risque associé au non-paiement des prestations de retraite des régimes devenus insolvables, particulièrement en raison de la position relativement favorable des participants, comparativement à ceux qui n'ont pas de régime à prestations déterminées.

ASPECTS FINANCIERS

Se garantir contre le risque de défaut de paiement des rentes comporte des coûts et le fait d'y exposer les contribuables suscite des difficultés d'autant plus grandes que l'obligation éventuelle du FGPR ne peut être évaluée qu'avec beaucoup d'incertitude. La responsabilité totale du FGPR est fonction du taux de liquidation des régimes dont les promoteurs, insolvables, ne peuvent répondre à leurs obligations de provisionnement des charges non capitalisées à la date de liquidation.

En cas de liquidation, il peut se produire un déficit de provisionnement pour diverses raisons. Les hausses des prestations accordées par le régime n'ont peut-être pas été entièrement amorties ou encore, il peut s'être produit des changements inattendus dans le rendement du capital investi, de sorte que les prestations ne sont pas entièrement capitalisées à la liquidation du régime. Il se peut qu'il y ait eu négociation d'un enrichissement des prestations futures, mais que cela ne figure pas encore aux documents du régime. Il est aussi possible que le promoteur n'ait pas les ressources financières pour continuer à appuyer la caisse de retraite ou qu'il ait retenu frauduleusement les versements à effectuer au régime.

Le risque de liquidation peut être lié aux difficultés d'une entreprise ou d'un secteur ou à une conjoncture économique globale défavorable (qui peut nuire à la fois à l'entreprise et au rendement des investissements du régime). La fréquence et l'ampleur de l'une ou l'autre de ces circonstances sont impossibles à prévoir avec suffisamment de certitude. Ainsi, les réclamations annuelles éventuelles du FGPR peuvent être de nombreuses fois supérieures à son actif du moment.

L'AVENIR DU FONDS

Puisque le Fonds de garantie des prestations de retraite risque de manquer de liquidités pour faire face à ses obligations actuelles et futures et qu'on ne peut connaître ses obligations éventuelles avec certitude, le gouvernement se demande s'il doit le maintenir et le restructurer afin d'équilibrer ses obligations potentielles et l'actif capitalisé ou l'éliminer et resserrer les responsabilités des promoteurs et des participants des régimes afin de protéger les prestations. Nous analysons ci-après deux de ces possibilités.

Restructuration du FGPR : Choix possible

Si le FGPR devait être maintenu, il faudrait restructurer radicalement les mécanismes de cotisation et de paiement pour qu'il puisse s'autofinancer. Les caractéristiques principales de cette restructuration seraient de limiter ou de réduire les paiements et réclamations et de relever les primes versées au Fonds.

There are a number of mechanisms which could be considered for limiting PBGF liabilities. The current $1,000 per month cap on individual coverage could be reduced or applied in a more restrictive manner. To limit claims costs, PBGF coverage could be reduced to more narrowly defined benefits such as employee contributions and basic benefits. In addition, benefits might be targeted to specific groups such as current retirees and older, longer service members through more stringent eligibility criteria. However, while limiting potential payouts would have to be addressed as the most effective cost containment measure, too great a reduction in benefit coverage would reduce Fund protection to an insignificant level.

The PBGF could also be put on a sounder actuarial footing if revenues were increased through higher employer premiums. Current premiums are based on a flat per member levy which applies to all covered members, and a solvency deficiency levy which is paid by those plans which represent a higher PBGF risk due to the fact that they are operating with unfunded solvency liabilities. Further study would be necessary to determine appropriate premium structures and levels. It is likely that because of the unpredictable nature of the PBGF risk premiums would have to be increased to much higher levels to match the potential liabilities. This would involve either raising the per member levy, or the solvency deficiency levy, or both. However, even with significant premium increases, there is no guarantee that premium levels will adequately cover the cost of claims. At the same time, there is a need to balance pension benefit protection with reasonable employer costs and to avoid unnecessarily channelling funds to the PBGF that could be used to support or improve pension plans.

Maintaining the PBGF would offer the advantage of ensuring a continued level of protection for pension plan benefits in the case of plan wind-up. If restructured appropriately, the current risk to taxpayers of a PBGF deficit could potentially be reduced. However, the uncertain nature of the PBGF risk makes it difficult to set actuarially sound levies. If levies were too high they would be burdensome to employers and plan members; if too low, taxpayers would be required to cover the shortfall.

Whether the PBGF is restructured or eliminated, consideration should be given to alternative means of reducing the risks to plan members and pensioners associated with plan failure. Several potential approaches are discussed below.

Eliminating the Pension Benefits Guarantee Fund: An Option

If the PBGF were eliminated, the transition could either be undertaken at a set point in time (e.g. when new pension legislation comes into force), or the PBGF could be phased out gradually. In either case, it would be important to reduce the plan failure risk to plan members and pensioners. This could be achieved through a number of measures.

First, selected plan funding requirements could be strengthened to improve the funding position of poorly funded plans. Funding standards have been improved significantly under the new Act and are expected to contribute to the enhanced funding of most plans over time, but some additional safeguards could be established. To minimize the risk to members of plans which

Il est possible de réduire les obligations éventuelles du FGPR par un certain nombre de mécanismes. Le plafond actuel de 1 000 $ par mois de protection individuelle pourrait être restreint davantage et défini plus étroitement. Pour limiter les coûts de réclamation, la protection du Fonds pourrait être réduite à des prestations moins générales, par exemple les cotisations des employés et les prestations de base. En outre, les prestations pourraient être ciblées en fonction de groupes spécifiques, par exemple les retraités actuels et les travailleurs ayant de longs états de service, par des critères d'admissibilité plus stricts. Cependant, même s'il faut analyser la réduction des déboursés éventuels en tant que mesure la plus efficace de contrôle des coûts, il est évident qu'à trop réduire le champ d'application du FGPR, on rendrait presque inutile la protection offerte par ce programme.

Un autre moyen serait de donner au FGPR une base actuarielle plus solide, en augmentant ses recettes par une hausse des primes des employeurs. Les cotisations actuelles se fondent sur un droit fixe par participant, applicable à tous les régimes membres, et sur un droit lié au déficit de solvabilité et payé par les régimes qui représentent un risque plus élevé pour le FGPR parce qu'ils fonctionnent avec des charges non capitalisées d'après l'évaluation de solvabilité. Une étude plus approfondie permettrait de fixer des structures et des niveaux adéquats de cotisation. Le risque assumé par le FGPR est intrinsèquement imprévisible, de sorte que les cotisations devraient probablement être relevées considérablement, pour correspondre aux obligations éventuelles. Il faudrait relever la cotisation par membre ou la prime de solvabilité, ou les deux. Même en relevant considérablement les primes, rien ne garantit que le niveau de prime couvrira adéquatement le coût des réclamations. De plus, le coût pour l'employeur ne saurait être excessif par rapport à la protection offerte, et il ne faut pas diriger indûment vers le FGPR des fonds qui pourraient être utilisés pour appuyer ou améliorer les régimes de retraite.

Le maintien du FGPR garantirait la continuité de la protection dont bénéficient les prestations de retraite, en cas de liquidation du régime. Par une restructuration adéquate, le risque imposé aux contribuables que le FGPR fasse un déficit pourra être réduit. Cependant, l'incertitude à l'égard du risque du FGPR rend difficile l'établissement de cotisations actuariellement justifiées. Si les primes sont trop élevées, elles imposeront un fardeau aux employeurs et aux participants; si elles sont trop faibles, les contribuables devront éponger le déficit.

Que le FGPR soit restructuré ou éliminé, nous ne saurions négliger les autres solutions possibles pour réduire les risques des participants et des retraités, en cas d'échec d'un régime. Nous analyserons ci-après quelques stratégies possibles.

Élimination du fonds de garantie des prestations de retraite : Choix possible

S'il faut mettre fin au FGPR, l'élimination peut être instantanée (à l'entrée en vigueur de la nouvelle loi) ou graduelle, mais il serait important, quelle que soit la solution, que les participants courent le moins de risque possible à l'égard de l'échec d'un régime. On pourrait y parvenir par un certain nombre de mesures générales.

D'abord, il serait possible de raffermir les exigences de provisionnement de certains régimes afin d'améliorer la situation financière de ceux qui sont mal provisionnés. Les normes de provisionnement ont été considérablement améliorées, dans la nouvelle loi, et devraient, avec le temps, favoriser une meilleure capitalisation dans la plupart des régimes, mais d'autres mesures de sécurité seraient possibles. Afin de réduire le risque que courent les participants des régimes mal provisionnés, nous pourrions adopter une disposition en vertu de laquelle le

are poorly funded, the Superintendent of Pensions could be given the authority to deny approval of benefit enhancements which increase plan liabilities where the plan is funded at less than a prescribed level. This would not include statutory benefit improvements, but would require that supplementary benefits be adequately funded. It is recognized that such a restriction might be opposed as undue interference in the collective bargaining process and in some cases could impose limitations on negotiated benefits. However, for poorly funded plans it would represent an important safeguard to protect the benefits of both active and retired plan members.

Second, a statutory priority list for distribution of plan benefits on wind-up could be introduced. The purpose of such a priority list would be to ensure the equitable distribution of pension benefits on plan wind-up. The proposed priorities would ensure that plan members first receive all employee contributions, followed by vested basic benefits, and then by supplementary, wind-up and other benefits as follows:

PRIORITY 1	Members' Contributions
PRIORITY 2	Vested Pension Benefits (pensions earned by workers as of date of plan wind-up)
PRIORITY 3	Ancillary Benefits (e.g. early retirement benefits)
PRIORITY 4	Statutory Plant Closure Benefits
PRIORITY 5	Other Benefits

The establishment of a priority list would represent a clear and visible mechanism which would be consistent for all plans and would provide substantial protection to current retirees. This approach would also ensure more responsible action with regard to pension funds in corporate restructurings. If maximum protection to existing pensioners were desired, pensions in pay could be given first priority to provide virtual certainty of payment to pensioners. In practice plan assets are sufficient to cover Priorities 1 and 2 in all but exceptional circumstances.

Surintendant des régimes de retraite aurait le pouvoir de refuser d'approuver les enrichissements de prestations qui augmentent les charges du régime, si celui-ci est provisionné en-deçà d'un niveau prescrit. Cette mesure ne toucherait pas l'amélioration des prestations statutaires, mais exigerait que les prestations supplémentaires soient provisionnées adéquatement. Évidemment, certains pourraient s'opposer à cette restriction et la percevoir comme une ingérence indue dans le mécanisme de la négociation collective, sans compter que, dans certains cas, elle pourrait limiter les prestations négociées. Cependant, dans les régimes peu capitalisés, ce serait une mesure de protection importante des prestations des participants et des retraités.

De plus, il serait possible d'introduire une liste statutaire de priorités, pour une distribution équitable des prestations des régimes, à la liquidation. En vertu de ces priorités, les participants recevraient d'abord toutes les cotisations d'employés, suivies par les prestations de base acquises et ensuite, les prestations supplémentaires, de liquidation et autres, comme suit :

PRIORITÉ 1	Cotisations des participants
PRIORITÉ 2	Prestations acquises (rentes servies, rentes acquises par les travailleurs à la date de la liquidation)
PRIORITÉ 3	Avantages accessoires (ex. : prestations de retraite anticipée)
PRIORITÉ 4	Prestations statutaires de fermeture d'établissement
PRIORITÉ 5	Autres prestations

La préparation d'une liste de priorités serait un mécanisme précis et évident, cohérent entre régimes et offrant une protection appréciable aux retraités actuels. Ainsi, on s'assurerait en outre d'agissements plus responsables à l'égard des caisses de retraite, dans les restructurations d'entreprises. Si l'objet est d'assurer une protection maximale aux retraités actuels, les rentes servies pourraient recevoir la première priorité de certitude virtuelle de versement aux bénéficiaires. Dans la pratique, l'actif du régime suffit au service des priorités 1 et 2, sauf dans des circonstances exceptionnelles.

Third, in order to enhance the ability of plan members and their bargaining agents to influence the status of their plans, it would be necessary to broaden member access to information on plan funding and investment performance. Specifically, plans with over 50 employees could be required to have a pension advisory body with plan member representation. As provided in the Pension Benefits Act, 1987 these advisory bodies could monitor the plan and make recommendations. Currently advisory committees with member representation may be established, but are not required. Participation in pension advisory bodies would provide for enhanced access for members to plan information and greater input into decisions affecting the pension fund. In most cases, this would result in greater pressure on plan sponsors to provide adequate funding.

To improve plan members' access to basic information on the funding status of the plan, plan sponsors could also be required to report regularly to members on plan performance and funding. Plans are currently obliged to report on member-specific plan provisions. This new requirement could be added to that process. It would be necessary to ensure the use of a format that is easily understood for these reports. These reports would be issued every three years, or every year for plans with a certain level of funding deficiency.

Consideration must be given to methods of increasing recoveries from plan sponsors in the situation where promised benefits are jeopardized as a result of a corporate transfer or restructuring. This issue has been addressed, in part, in Section 3 of the discussion paper on Improved Administration and Enhanced Enforcement and Protection. Another possible way of reducing this risk is to authorize the Pension Commission of Ontario to require that a corporation whose business has been restructured maintain liability for pension benefits to employees of the restructured business for some period of time after completion of the restructuring. This could apply in cases where the restructuring has been undertaken to avoid the application of regulatory standards designed to protect pension entitlements or funding, or where the restructuring has the effect of jeopardizing pension entitlements or funding. This approach would encourage more prudent management of pension funds and plans, and would discourage corporate reorganizations designed to avoid responsibility for pension plans.

In addition, on transfer of the responsibility for a pension plan to another company (for example as a result of a sale of a business), the sponsor could be required to retain liability for any unfunded liabilities of the plan on a straight-line declining basis for a 5-year period to allow for an orderly transition of pension responsibilities. This provision would discourage corporate abandonment of poorly funded pension plans and would increase the protection of members in the case of plan failure associated with a corporate transfer.

Elimination of the PBGF would mean that the additional protection currently afforded members of Ontario defined benefit pension plans in the case of a plan failure would no longer be available. Conversely, funds currently channelled into PBGF levies would be available for other expenditures (including enhancing pension benefits) and problems associated with transfer of risk to taxpayers would be alleviated.

En outre, pour que les participants et leurs agents négociateurs aient plus d'influence sur la situation du régime de retraite, il faudrait que les premiers aient davantage accès à l'information sur le provisionnement et le rendement de l'investissement du régime. Plus précisément, les régimes regroupant plus de 50 employés pourraient être tenus de créer un comité consultatif des rentes où les participants au régime seraient représentés. Conformément aux dispositions actuelles de la loi de 1987, ces organismes consultatifs pourraient exercer une surveillance sur les régimes et formuler des recommandations. Actuellement, ces comités peuvent exister, mais il n'y a pas d'obligation à cet égard. Si les participants jouent un rôle dans les comités consultatifs des rentes, ils auront davantage accès aux renseignements sur leur régime et un plus grand rôle dans les décisions qui touchent la caisse de retraite. Dans la plupart des cas, cela incitera encore plus les promoteurs à provisionner adéquatement leur régime.

Pour que tous les participants aient davantage accès aux renseignements essentiels sur la situation financière du régime de retraite, les promoteurs pourraient de plus être tenus de faire périodiquement rapport aux membres sur le rendement et le financement du régime (ex. : par une déclaration périodique). Actuellement, les régimes sont tenus de préparer un rapport sur les dispositions du régime qui touchent spécifiquement les participants. Cette exigence supplémentaire pourrait s'ajouter à ce mécanisme. Il faudrait veiller à ce que la présentation utilisée pour ces rapports soit facile à comprendre. Ces rapports pourraient être publiés aux trois ans, ou chaque année dans le cas des régimes où le déficit de provisionnement atteint un certain niveau.

Il faudra se pencher sur les méthodes permettant un meilleur recouvrement des montants des promoteurs, si les prestations promises sont remises en question par suite d'une cession ou restructuration d'entreprise. La question a été en partie analysée à la section 3 du document de discussion, sous l'en-tête Amélioration de l'administration, de la mise en application et de la protection. Un autre moyen possible de réduire les risques est d'autoriser la Commission des régimes de retraite de l'Ontario à exiger qu'une entreprise restructurée conserve ses obligations à l'égard des prestations de retraite des employés de l'entreprise restructurée, pendant une certaine période après la restructuration. Cela s'appliquerait dans les cas où la restructuration visait à éviter des normes réglementaires conçues pour protéger les droits de rentes ou leur provisionnement ou encore, si elle met en péril ces droits ou leur provisionnement. Cela favoriserait une gestion plus prudente des caisses et des régimes de retraite et serait une sorte de dissuasion à l'endroit des restructurations visant à éviter la responsabilité des régimes de retraite.

En outre, en cas de transfert de la responsabilité d'un régime de retraite à une autre entreprise, par exemple par suite d'une vente des affaires, le promoteur pourrait être tenu de conserver la responsabilité de tout élément de passif non capitalisé du régime, en décroissance continue sur cinq ans, pour favoriser la cession ordonnée des responsabilités de rentes. Cette disposition dissuaderait les entreprises de se départir de régimes de retraite mal provisionnés et offrirait une meilleure protection aux participants, en cas d'échec du régime par suite de la cession de l'entreprise.

Si le FGPR est éliminé, les participants aux régimes à prestations déterminées de l'Ontario perdraient la protection supplémentaire dont ils bénéficient en cas d'échec d'un régime. Par contre, les fonds consacrés actuellement aux cotisations qui alimentent le FGPR pourraient être affectés ailleurs (par exemple à la revalorisation des prestations de retraite) et les difficultés liées au transfert du risque aux contribuables disparaîtraient.

THE PENSION BENEFITS GUARANTEE FUND: FUTURE CONSIDERATIONS

Two specific options for addressing the problems of the current PBGF structure have been canvassed. In addition to restructuring or eliminating the PBGF there are numerous other possibilities which may also merit further analysis and consideration. Among these may be privatization of the PBGF, adjusting the Fund to cover only pensions in pay, or making the PBGF a voluntary program. There remains considerable room for debate on the appropriate future of the Pension Benefits Guarantee Fund. In reflecting on the choices for the future of the Fund, it is important to balance the protection of pensioners' and members' benefits with the costs to sponsors, members, and taxpayers. The key considerations of fairness and fiscal responsibility are fundamental to this debate. Comment is particularly sought from all interested parties on alternative approaches for addressing the issue of protection of pension benefits, and in particular on appropriate directions for the PBGF.

ASPECTS À ENVISAGER À L'ÉGARD DU FGPR

Nous avons analysé deux solutions précises visant à régler les problèmes inhérents à la structure actuelle du FGPR. En plus de la restructuration ou de l'élimination du Fonds, il existe nombre d'autres possibilités qui mériteraient une analyse approfondie, notamment la privatisation éventuelle du FGPR, son reciblage pour ne couvrir que les rentes servies, ou encore sa transformation en programme volontaire. Il reste beaucoup de place à la discussion sur l'avenir qui serait le plus approprié pour le Fonds de garantie des prestations de retraite. En s'interrogeant sur les choix d'avenir du Fonds, il est important de parvenir à un équilibre entre la protection des prestations des retraités et des participants et les coûts des promoteurs, des participants et des contribuables. Les grands facteurs que sont l'équité et la responsabilité financière ne peuvent être absents du débat. Nous voulons plus particulièrement recevoir les opinions de tous les intéressés sur les autres moyens possibles de régler la question de la protection des prestations de retraite, et notamment sur les orientations à préférer à l'égard du FGPR.

VII. THE PENSION BENEFITS AMENDMENT ACT AND REGULATIONS RELATED TO SOLVENCY VALUATION AND INFLATION PROTECTION

The policy issues related to inflation protection, family law, solvency valuation, and other amendments to the Pension Benefits Act, 1987 have been discussed in the previous pages. To provide a more detailed indication of the policy proposals outlined in the discussion paper, the proposed reforms have been incorporated in the draft amendments and regulations that follow. Draft legislative language is being released at this time so that interested parties can have an opportunity to examine the government's proposals in detail during the consultation process.

The draft amendments have been incorporated into the Pension Benefits Act, 1987 so that readers may have the benefit of reviewing the proposed reforms in the context of a consolidated version of the Act. Deletions, additions and alterations have been indicated throughout. Draft regulations related to solvency valuation have also been provided for the purposes of consultation.

VII. LA LOI MODIFIANT LA LOI SUR LES RÉGIMES DE RETRAITE ET LES RÈGLEMENTS RELATIFS À L'ÉVALUATION DE SOLVABILITÉ ET À LA PROTECTION CONTRE L'INFLATION

Nous avons, dans les pages qui précèdent, analysé les questions d'orientation relatives à la protection contre l'inflation, au droit de la famille et à l'évaluation de solvabilité, ainsi que d'autres amendements à la Loi de 1987 sur les régimes de retraite. Afin de donner au lecteur une idée plus précise des orientations avancées dans le document de discussion, nous avons incorporé les réformes envisagées aux projets d'amendements et de règlements qui figurent ci-après. Nous publions ces projets d'amendements législatifs afin que les parties intéressées aient la possibilité d'analyser en détail les projets du gouvernement, dans le cadre du mécanisme de consultation.

Les projets d'amendement ont été incorporés à la Loi de 1987 sur les régimes de retraite, afin que le lecteur puisse analyser les réformes envisagées dans le contexte d'une refonte de la loi. Les retraits, ajouts et modifications sont tous indiqués. Nous avons ajouté les projets de règlements sur l'évaluation de solvabilité et la protection contre l'inflation pour obtenir le point de vue des intervenants.

APPENDIX A

GLOSSARY OF PENSION TERMS

ACCRUED PENSION - Amount of pension credited to a plan member according to service, earnings, etc., up to a given time.

ACTIVE MEMBERS - Employees currently working and who are members of a pension plan.

ACTUARIAL ASSUMPTION - A set of estimates used to value a pension concerning future developments affecting the cost of benefits to be provided under a pension plan (e.g., mortality rates, salary increases, investment return, employee turnover, retirement ages).

ACTUARIAL VALUATION - Examination of a pension plan by an actuary to assess the solvency of the plan and determine the level of contributions required to maintain or improve its solvency.

ACTUARY - A professionally trained specialist in the pension and insurance fields responsible for calculating insurance risks and premiums. In Canada, full professional recognition requires membership in the Canadian Institute of Actuaries.

ADDITIONAL VOLUNTARY CONTRIBUTIONS - Contributions to a pension plan made voluntarily by an employee in addition to those required for specific plan benefits. Extra benefits are purchased by the additional contributions but no additional cost is borne by the employer.

AD HOC ADJUSTMENT - Amount added to pension after retirement to compensate for increases in the cost of living or on an irregular basis and not as a result of a prior commitment or contract. To be distinguished from formal indexing.

ADMINISTRATOR - The person or persons who administer the pension plan, i.e., who arrange for valuation payments, etc.

AMORTIZATION PERIOD - Period of years over which payments are made into a pension plan to meet the cost of benefits that have not been fully funded to date. (See Unfunded Liability)

ANCILLARY BENEFITS - Benefits in addition to regular pension benefits and survivor benefits such as bridging benefits and enriched early retirement benefits.

ANNUITY - In pension terminology, periodic payments (usually monthly) provided by the terms of a contract for the lifetime of an individual (the annuitant) or the individual and his or her designated beneficiary; may be fixed or varying amount, and may continue for a period after the annuitant's death.

ASSET MIX - The mix of assets refers to the proportions of various types of investments held by a pension fund, usually expressed as a percentage of total investments held in bonds, equities, real estate, etc.

AVERAGE (INDUSTRIAL) WAGE - See Industrial Aggregate

BENEFICIARY - In a pension plan, a person who on the death of a plan member or pensioner, may become entitled to a benefit under the plan. (See Survivor Benefits, Death benefits)

ANNEXE A

GLOSSAIRE DES RÉGIMES DE RETRAITE

ACTE DE FIDUCIE : Entente établissant les devoirs et responsabilités du ou des fiduciaires en vertu du régime de retraite.

ACTUAIRE : Professionnel possédant une formation spéciale dans les domaines des assurances et des régimes de retraite et responsable du calcul des risques et des primes d'assurance. Au Canada, seuls sont reconnus professionnellement les actuaires qui sont membres de l'Institut Canadien des Actuaires.

ACTUALISATION (DES PRESTATIONS) : Terme appliqué à la révision et au relèvement occasionnels des prestations acquises (ou courues) pour tenir compte du niveau des salaires, si le régime ne comporte pas de mécanisme de revalorisation automatique, comme dans la formule des gains ultimes.

ADMINISTRATEUR : Personne ou groupe de personnes administrant le régime de retraite, c.-à-d. effectuant les versements d'évaluation, etc.

ÂGE NORMAL DE LA RETRAITE : L'âge, précisé dans un régime de retraite, auquel on s'attend que les employés prendront leur retraite ou auquel ils ont le droit de le faire; ce peut être l'âge minimal ouvrant droit à une rente intégrale. (Voir aussi Retraite anticipée; Rente normale)

ALLOCATION AU CONJOINT : Aux termes de la Loi sur la sécurité de la vieillesse, versements mensuels fondés sur le revenu familial et accordés au conjoint (veuf ou veuve qui a de 60 à 65 ans) d'un récipiendaire de rente PSV. En 1984, cette prestation a été élargie à l'ensemble des veufs et veuves de 60 à 65 ans.

ANNÉES DÉCOMPTÉES : Période d'emploi figurant dans le calcul du montant de la rente qu'une personne peut recevoir; peut aussi servir de critère d'admissibilité pour tel ou tel type de prestation. (Ne pas confondre avec Service ininterrompu.)

ASSOCIATION CANADIENNE DES ORGANISMES DE CONTRÔLE DES RÉGIMES DE RETRAITE (ACOR) : L'Association canadienne des organismes de contrôle des régimes de retraite regroupe les hauts fonctionnaires gouvernementaux responsables de l'administration des lois sur les régimes de retraite, dans chaque palier de compétence qui a adopté des lois dans ce domaine (c.-à-d. l'Ontario, l'Alberta, le Manitoba, la Saskatchewan, le Québec, la Nouvelle-Écosse, Terre-Neuve et le gouvernement fédéral). Les représentants des autres provinces intéressées peuvent assister aux réunions de l'organisme.

AVANTAGES ACCESSOIRES : Prestations s'ajoutant aux prestations normales de retraite et aux prestations de survivant, par exemple les prestations de transition généreuses de retraite anticipée.

BÉNÉFICIAIRE : Dans un régime de retraite, personne qui, au décès du participant ou du pensionné, peut avoir droit à une prestation en vertu du régime. (Voir Prestation de survivant, Prestation de décès)

BLOCAGE (IMMOBILISATION) : Exigences de la loi selon laquelle les cotisations versées après une certaine date ne peuvent être retirées ou autrement saisies si l'employé, à la cessation d'emploi, a atteint un certain âge ou qu'il a un certain nombre d'années de service ou d'adhésion au régime. (Voir Acquisition)

CAISSE COMMUNE : Caisses d'au moins deux régimes de retraite, confiées à une institution financière et combinées en une seule caisse, à des fins d'investissement, chaque régime partageant

BENEFIT - Generally, any form of payment to which a person may become entitled under the terms of a plan; often refers specifically to the normal pension provided by the plan formula.

BENEFIT FORMULA - Provision in a pension plan for calculating a member's defined benefit according to years of service and earnings (career or final average), a fixed dollar amount, etc.

BRIDGING BENEFITS - A temporary benefit provided to employees who retire prior to the age when OAS and CPP benefits are available in order to supplement their pension income until these benefits apply.

CANADIAN ASSOCIATION OF PENSION SUPERVISORY AUTHORITIES (CAPSA) - Canadian Association of Pension Supervisory Authorities is made up of a senior government officials in charge of the administration of the pension legislation of each jurisdiction with pension benefits legislation (i.e., Ontario, Alberta, Manitoba, Saskatchewan, Quebec, Nova Scotia Newfoundland and the federal Government). Representatives from other interested provinces may attend the meeting.

CANADIAN PENSION PLAN (CPP) - A national mandatory, earnings-related pension plan introduced together with the Quebec Pension Plan (QPP) in 1965, for all working Canadians between the ages of 18 and 70. It is financed on a partial pay-as-you-go basis.

CAREER AVERAGE PLAN - A defined benefit plan which applies the unit of benefit to earnings of the member in each year of service, and not to earnings in the final year or average earnings in the final 3 or 5 years.

CASH WITHDRAWAL - A return of personal pension contribution to a member whose employment is terminated.

COMMUTED VALUE - Amount of an immediate lump-sum payment estimated to be equal in value to a future series of payments. (See also Present Value)

CONSUMER PRICE INDEX (CPI) - Measures the percentage change through time in the cost of purchasing a constant "basket" of goods and services representing the purchases by a particular population in a specified time period. The "basket" is of an unchanging or equivalent quantity and quality of goods and services. Changes in the cost of the basket are therefore due only to price movements. (Measured by Statistics Canada and reported in Consumer Price Index 62-001.)

CONTINUOUS SERVICE - Period during which an employee is continuously employed by the same employer; may be defined in pension plan (or by law) so as to include certain periods of absence, and/or service with an associated or predecessor employer. To be distinguished from Credited Service.

CONTRIBUTORY PLAN - A pension plan which requires the employees to make contributions by payroll deduction in order to qualify for benefits under the plan.

CREDITED SERVICE - Period of employment counted in calculating the amount of a pension which may be received by an individual; may also be used as the basis for qualifying for a particular type of benefit. (To be distinguished from Continuous Service.)

CREDIT SPLITTING - A provision in a pension plan or legislation whereby one spouse, on dissolution of marriage, may obtain a share of pension credits earned by the other partner during the period of marriage or thereafter.

proportionnellement les recettes nettes d'investissement.

CESSATION D'EMPLOI : Dissolution du lien entre l'employeur et l'employé pour toute raison autre que le décès ou la retraite.

CESSATION D'UN RÉGIME : Arrêt d'un régime de retraite professionnel; elle peut être volontaire (cessation) ou involontaire (dissolution, par exemple en cas de faillite); procédure de liquidation réglementée par la Loi de 1987 sur les régimes de retraite.

COMMISSION DES RÉGIMES DE RETRAITE DE L'ONTARIO : Commission responsable de l'administration de la Loi de 1987 sur les régimes de retraite et du règlement promulgué en vertu de cette loi.

COMPOSITION DE L'ACTIF : On appelle composition de l'actif la part proportionnelle des divers types d'investissements d'une caisse de retraite; elle s'exprime habituellement en pourcentage des investissements totaux en obligations, valeurs mobilières, valeurs immobilières, etc.

CONDITION D'ADMISSIBILITÉ : Condition à laquelle doit répondre un employé avant d'avoir l'autorisation ou l'obligation de se joindre à un régime de retraite, par exemple l'âge ou la durée du service. Le terme peut aussi s'appliquer à l'admissibilité à certaines prestations.

CONJOINT : Pour le partage des crédits, des prestations de survivant, etc., l'homme ou la femme : a) d'un couple marié ou b) d'un couple non marié mais où les deux personnes vivent une relation de conjoints, (i) pour une période continue d'au moins trois ans ou (ii) dans une relation ayant une certaine permanence, s'ils sont les parents naturels ou adoptifs d'un enfant, selon les définitions de la Loi de 1986 sur le droit de la famille.

COORDINATION : Disposition d'un régime de retraite qui coordonne les cotisations et/ou les prestations du régime à celles d'un programme de retraite gouvernemental, par exemple le Régime de pensions du Canada.

COTISATIONS FACULTATIVES : Cotisations volontaires d'un employé à un régime de retraite, en plus de celles exigées pour avoir droit aux prestations proprement dites du régime. Les prestations supplémentaires s'acquièrent par des cotisations additionnelles, mais l'employeur n'assume aucun coût supplémentaire.

CRÉDIT D'IMPÔT : Disposition permettant de réduire l'impôt à payer (et non le revenu imposable) du montant des autres taxes à payer ou d'une partie du logement et des autres dépenses du contribuable; si la personne n'a pas de revenu imposable, ce crédit se traduit en fait par un remboursement.

CUMUL DES PRESTATIONS : Terme parfois utilisé dans un type de régime où il n'y a pas coordination entre les prestations des régimes de retraite professionnels et celles des programmes publics de revenu de retraite, de sorte que les cotisations et les prestations du régime ne sont pas coordonnées à celles des programmes gouvernementaux de retraite.

DÉFICIT ACTUARIEL : Passif non capitalisé constaté par l'actuaire lors de l'examen d'un régime de retraite et résultant d'une différence entre les résultats réels (gains d'investissements, niveaux des salaires, etc.) et les hypothèses adoptées pour ces variables à l'évaluation précédente.

ÉCHELLE DE SALAIRES : Dans l'établissement du coût du régime, évaluation des augmentations salariales futures des participants dont les prestations sont fondées sur les gains.

ENSEMBLE DES ACTIVITÉS ÉCONOMIQUES : Total des gains d'emploi dans toutes les industries couvertes par l'enquête de Statistique Canada et divulgués dans Emploi, gains et durée du travail (numéro de catalogue 72-002). Cette enquête porte sur toutes les industries sauf dans les domaines suivants : agriculture, pêche et piégeage, services ménagers privés, organisations religieuses et service militaire.

DEATH BENEFIT - A lump sum (usually), payable from a pension plan to the beneficiary or estate of a member who dies before retirement. May refer to a payment on death after retirement.

DEFERRED MEMBERS - Terminated employees eligible for a deferred vested pension. (See also Deferred Vested Pension)

DEFERRED VESTED PENSION - A specified pension determined at the time of termination of employment or termination of a plan but not payable until some later date, usually normal retirement age. (See also Vesting)

DEFINED BENEFIT PLAN - A plan which defines the pension to be provided (based on service, earnings, etc.) but not the total contributions. If the plan is contributory, the rate of employee contributions may be specified, with the employer paying the balance of cost. To be distinguished from a defined contribution plan.

DEFINED CONTRIBUTION PLAN - A plan under which the amount of the employer contribution per plan member and, where applicable, the amount of the employee contribution is specified in advance and the benefits to be received by the retirees is calculated at the date of retirement based on the accumulated contributions and the investment yield of the accumulated contributions.

DISABILITY PENSION - Pension payable to an employee permanently incapacitated due to physical or mental disability.

DIVISION OF PENSION CREDITS - Also known as "credit splitting", a provision in pension plans or pension legislation whereby one spouse on dissolution of marriage, may obtain a share of pension credits earned by the other partner during the period of marriage or thereafter.

EARLY RETIREMENT - Provision in a pension plan or legislation for retirement earlier than the normal pension age. The amount of pension credited under the plan formula may be reduced according to the member's attained age; or an unreduced pension may be payable if a specified service condition (e.g., 30 years) has been met. (See also Special Retirement)

EARNINGS - A person's money income from employment or self-employment; usually excludes such forms of income as rents or bond interest. In some pension plans certain bonuses, sick pay etc., may excluded in calculating benefits.

ELIGIBILITY REQUIREMENT - A condition such as age or length of service that must be met before an employee is permitted or required to join a pension plan. Term may refer to eligibility for certain benefits.

EXCESS EARNINGS - Earnings from investments of a pension fund in excess of an assumed or expected rate of return.

EXPERIENCE DEFICIENCY - An unfunded liability, revealed by an actuarial review of a pension plan resulting from a difference between actual experience (investment earnings, salary levels, etc.) and assumptions about these variables made at the time of previous valuation.

FINAL AVERAGE (EARNINGS) FORMULA - A defined benefit formula which applies the unit of benefit credited for each year of service to the member's average earnings for a specified number of years just before retirement. (See also Final Earnings Formula)

ENTIÈREMENT PROVISIONNÉ : Terme décrivant un régime qui, à tel moment, a suffisamment d'actif pour faire face à toutes les rentes et autres prestations à servir à cette date.

ÉVALUATION ACTUARIELLE : Examen d'un régime de retraite fait par un actuaire, pour en évaluer la solvabilité et préciser le niveau des cotisations requises pour maintenir ou augmenter la solvabilité.

ÉVALUATION À LONG TERME : Évaluation ou calcul de l'actif et du passif d'un régime en supposant que ce dernier est permanent. On dit aussi «évaluation d'exploitation».

ÉVALUATION DE SOLVABILITÉ : Évaluation ou calcul de l'actif et du passif du régime en supposant qu'il y a eu cessation du régime à la date de l'évaluation. On parle aussi d'évaluation de liquidation ou de dissolution.

FORMULE DU SALAIRE ULTIME MOYEN : Méthode de calcul des prestations déterminées qui applique les unités de rente acquises pour chaque année de service à la moyenne des gains du participant pendant un certain nombre d'années juste avant le départ à la retraite. (Voir aussi Formule des gains ultimes)

GAINS : Revenu de rémunération d'un employé ou d'un travailleur autonome; cela exclut habituellement certaines formes de revenu comme les loyers ou les intérêts sur obligations. Dans quelques régimes de retraite, certaines primes, certains congés de maladie, etc., peuvent être exclus du calcul des prestations.

GAINS EXCÉDENTAIRES : Gains d'investissement d'une caisse de retraite, au-delà d'un taux de rendement supposé ou prévu.

GAINS OUVRANT DROIT À PENSION : Partie précise des gains totaux d'une personne, à l'exception de certaines primes, et servant à calculer le droit de pension (la rente à verser). (Voir aussi Maximum des gains annuels ouvrant droit à pension ou MGAP)

HYBRIDE : Type de rente où on promet des prestations de retraite égales, à l'éventualité la plus favorable, aux prestations minimales garanties ou aux cotisations de l'employé et de l'employeur, plus les gains d'investissement.

HYPOTHÈSE ACTUARIELLE : Ensemble d'évaluations utilisées pour établir la valeur d'une rente et touchant les éventualités futures influant sur le coût des prestations à verser en vertu d'un régime de retraite (ex. : taux de mortalité, augmentations salariales, rendement du capital investi, roulement des employés, âges de départ à la retraite).

INDEXATION : Disposition prévoyant la revalorisation périodique du montant des prestations (habituellement après la retraite) selon une méthode ou formule fondée sur un indice reconnu des prix ou des salaires, par exemple l'Indice des prix à la consommation. Ne pas confondre avec les redressements ponctuels.

INDICE DES PRIX À LA CONSOMMATION (IPC) : Pourcentage mesuré du changement dans le temps du coût d'achat d'un panier «constant» de biens et de services types dans une population donnée et une période déterminée. Le panier se compose des mêmes articles et services, par la quantité et la qualité (ou leurs équivalents). Les changements dans le coût du «panier» sont donc uniquement attribuables aux fluctuations de prix. (Établi par Statistique Canada et publié dans Indice des prix à la consommation, n° cat. 62-001)

LIQUIDATION : Voir Cessation du régime.

FINAL PAY PLAN - Term commonly used for a pension plan in which benefits are based on earnings in a member's last years of service.

FLAT BENEFIT PLAN - A defined benefit plan that specifies a dollar amount pension to be credited for each of service.

FLAT RATE PENSION - A defined benefit expressed as a dollar amount of monthly pension, not related to service or earnings, but paid on retirement after meeting certain qualifying conditions. (See, for example, Old Age Security.)

FULLY FUNDED - Term describing a plan which, at a given time, has sufficient assets to provide for all pensions and other benefits in respect of service up to that date.

FUNDING - Systematic payments into a fund which, with investment earnings on these funds, are intended to provide for pensions and other benefits as they become payable.

FUNDING RATIO - Ratio of the assets of a pension plan to its liabilities, as calculated on a wind- up basis.

GOING CONCERN BASIS - Refers to the assumption used when making an actuarial valuation, that the pension plan will continue in operation indefinitely.

GUARANTEED ANNUAL INCOME SYSTEM (GAINS) - An Ontario government programme providing monthly income supplements to certain needy residents, based on a guaranteed amount of annual total income. "GAINS - A" benefits apply to those aged 65 and over; "GAINS - D" benefits are for the blind and disabled.

GUARANTEED ANNUITY - An annuity which will be paid for the lifetime of a person or for a certain period which every is longer but in any event for a minimum period, e.g., if an annuitant dies after the three years, payment will be continued to a beneficiary or the estate for two years. (See also Survivor Benefits)

GUARANTEED INCOME SUPPLEMENT (GIS) - A monthly payment under the federal Old Age Security Act to needy recipients of the OAS pension, based on a guaranteed minimum income amount. (See Old Age Security; Guaranteed Annual Income System (GAINS); Spouse's Allowance)

HYBRID - A type of pension which promises a pension benefit equal to the greater of: a minimum guaranteed pension benefit or employee and employer contributions plus investment earnings.

INDEXING - Provision for periodically adjusting a benefit amount (usually after retirement) according to a formula based on a recognized index of price or wage levels, e.g., the Consumer Price Index. To be distinguished from ad hoc adjustment.

INDUSTRIAL AGGREGATE - The sum of employment earnings of all industries covered in the survey as measured by Statistics Canada and reported in Employment, Earnings, and Hours (Cat. 72-002). It covers all industries with the following exceptions: agriculture, fishing and trapping, private household services, religious organizations, and military services.

INTEGRATION - Provision in a pension plan which relates plan contributions and/or benefits to those of government pension program, e.g., Canada Pension Plan.

MAXIMUM DES GAINS ANNUELS OUVRANT DROIT À PENSION (MGAP) : Terme utilisé dans le Régime de pensions du Canada pour désigner les revenus d'emploi sur lesquels les cotisations et les prestations du RPC sont calculées. Le MGAP change chaque année selon une formule fondée sur les niveaux moyens des salaires.

MEMBRES ACTIFS : Employés qui travaillent et font partie d'un régime de retraite.

MÉTHODE DE CALCUL DE LA RENTE : Disposition d'un régime de retraite pour calculer les prestations déterminées du participant en fonction du nombre d'années-service et des gains (reconstitution de carrière ou fin de carrière), d'un montant fixe en dollars, etc.

MISE EN COMMUN : Terme utilisé dans le domaine des régimes de retraite pour décrire toute méthode de partage de certains risques ou coûts par l'ensemble des membres d'un groupe, pour en retirer certains avantages.

PARTAGE DES CRÉDITS : Disposition d'un régime de retraite ou d'une loi en vertu de laquelle, à la dissolution du mariage, le conjoint peut obtenir une part des crédits de rente acquis par l'autre conjoint pendant le mariage ou par la suite.

PARTAGE DES CRÉDITS DE RETRAITE : Voir Partage des crédits.

PARTICIPANT : Personne qui participe à un régime de retraite (voir aussi Membres actifs)

PASSIF NON CAPITALISÉ (INSUFFISANCE ACTUARIELLE) : En règle générale, tout montant par lequel l'actif d'un régime de retraite est inférieur au passif. Il existe un déficit actuariel initial à la création, pour le service passé, de prestations non provisionnées dans les cotisations pour services courants. (Voir aussi Déficit actuariel; Provisionnement)

PÉRIODE D'AMORTISSEMENT : Nombre d'années où on verse à la caisse de retraite pour faire face au coût des prestations non encore entièrement capitalisées. (Voir Passif non capitalisé)

PORTEFEUILLE : L'ensemble des investissements que détient une caisse de retraite.

PRESTATION : En général, toute forme de versement auquel une personne peut avoir droit en vertu d'un régime; terme souvent employé pour désigner la rente normale versée en vertu de la méthode de calcul du régime.

PRESTATION DE DÉCÈS : Montant (habituellement) forfaitaire que le régime de retraite doit verser au bénéficiaire ou à la succession du participant décédé avant son départ à la retraite. Peut s'appliquer à un versement effectué au décès du retraité.

PRESTATION DE SURVIVANT : En règle générale, toute prestation due en vertu d'un régime de retraite au conjoint survivant d'un participant qui meurt avant ou après son départ à la retraite.

PRESTATIONS ACQUISES : Prestations auxquelles un employé a droit aux termes d'un régime en fonction de l'âge atteint ou du nombre d'années de service; exige habituellement le blocage des cotisations à l'adhésion au régime et pour une certaine période.

PRESTATIONS DE TRANSITION (ou DE RACCORDEMENT) : Prestations temporaires accordées aux employés qui prennent leur retraite avant l'âge où ils auront droit aux prestations PSV et RPC, pour compléter leur revenu de retraite jusqu'à ce que ces prestations entrent en vigueur.

PRINCIPE DE LA CONTINUITÉ D'EXPLOITATION : Se dit de l'hypothèse utilisée dans la préparation de l'évaluation actuarielle et selon laquelle le régime de retraite continuera à fonctionner indéfiniment.

INVESTMENT RETURN (YIELD) - Earnings of a pension fund including interest on fixed income securities (bonds, mortgages, etc.) dividends, capital gains, etc.

INTEGRATION - Provision in a pension plan which relates plan contributions and/or benefits to those of a government pension program, e.g., Canada Pension Plan.

JOINT AND SURVIVOR ANNUITY - An annuity payable until the death of the retired employee, and continuing thereafter to the surviving widow or widower until that person's death. Required to be provided as an option at time of retirement; may be equal in value to the retire's pension or reduced on his or her death.

LOCKING IN - Legislative requirement that pension contributions made after a certain date cannot be withdrawn or otherwise forfeited if the employee on termination of employment has attained a certain age or has completed a certain period of service or plan membership. (See Vesting)

MINIMUM WAGE - Lowest rate of pay an employer may pay an employee according to applicable provincial or federal minimum wage legislation.

MORTALITY TABLE - A table showing expected rates of death at various ages for people born at different dates in various periods. Used by actuaries to arrive at mortality assumptions when estimating the cost of a pensions for a group. (See also Unisex Mortality Table)

MULTI-EMPLOYER PLAN - A pension plan covering employees of more than one employer, usually by agreement with a union or group of unions.

NET REPLACEMENT RATIO - Measurement of adequacy of retirement income by relating it to income immediately before retirement, taking into account income taxes, tax credits, etc.

NON-CONTRIBUTORY PLAN - A plan in which all required contributions are made by the employer.

NORMAL PENSION - Amount of pension, according to the benefit formula, to which an employee is or would be entitled on reaching normal retirement age, based on earnings and/or service.

NORMAL RETIREMENT AGE - The age as specified in a pension plan, at which employees are expected or entitled to retire; may be the earliest age at which an unreduced pension is payable. (See also Early Retirement; Normal Pension)

OLD AGE SECURITY (OAS) - Federal programme providing a universal, flat rate pension to all residents aged 65 years and over, regardless of need. (See also Guaranteed Income Supplement; Spouse's Allowance)

ONGOING VALUATION - A valuation or calculation of plan assets and liabilities based on the assumption that the plan is ongoing. Also referred to as a "going concern" valuation.

PAST SERVICE - Period of service accrued by of an employee before becoming a member of a pension plan. Term may be used to define certain benefits that differ from those of current service (future service). (See also Unfunded Liability)

PAY-AS-YOU-GO PLAN - Term used for benefits that are not funded except when paid to individuals, i.e., payment is made from current revenue or other sources outside the plan as such (also known as Pay-Go Plan). A modified pay-as-you-go plan has a small fund but is not fully funded.

PROGRAMME DE SÉCURITÉ DE LA VIEILLESSE (PSV) : Programme fédéral offrant une rente universelle forfaitaire à tous les résidents qui ont atteint 65 ans, sans égard aux besoins. (Voir aussi Supplément de revenu garanti; Allocation au conjoint)

PROTECTION RÉTROACTIVE CONTRE L'INFLATION : S'applique aux retraités actuels et aux titulaires de rentes différées, lorsqu'ils prennent leur retraite, à compter de l'entrée en vigueur de la loi, et au niveau des prestations qu'ils reçoivent à ce moment. S'applique également aux crédits de service passé des retraités actuels. Cette indexation n'offre pas de «rattrapage» à l'égard de l'inflation qui sévissait avant l'entrée en vigueur de la mesure législative.

PROVISIONNEMENT : Versements systématiques à une caisse et qui, avec les gains qu'ils rapportent, doivent permettre de répondre aux rentes et autres prestations qu'il faudra servir.

RAPPORT DE PROVISIONNEMENT : Rapport entre l'actif d'un régime de retraite et ses charges, calculé comme s'il y avait liquidation. On dit aussi «ratio de provisionnement».

RÉGIME À COTISATIONS DÉTERMINÉES : Régime où on précise d'avance le montant de la cotisation de l'employeur par participant et, s'il y a lieu, celle de l'employé; les prestations que recevront les retraités sont calculées à la date du départ à la retraite, d'après les cotisations accumulées et investies et leur rendement.

RÉGIME À PRESTATIONS DÉTERMINÉES : Régime où on précise la rente à verser (en fonction du service, des gains, etc.) mais non les cotisations totales. Dans le cas d'un régime contributif, on peut préciser le taux de cotisation de l'employé, l'employeur versant le reste. Ne pas confondre avec Régime à cotisations déterminées.

RÉGIME À PRESTATIONS FORFAITAIRES : Régime à prestation déterminée où on précise le montant de la rente à créditer pour chaque année de service.

RÉGIME CONTRIBUTIF : Régime de retraite auquel l'employé doit cotiser par retenues à la source pour être admissible aux prestations du régime.

RÉGIME DE PENSIONS DU CANADA (RPC) : Régime de retraite national, obligatoire, fondé sur la rémunération, introduit en même temps que le Régime des rentes du Québec (RRQ), en 1965, et s'adressant à tous les travailleurs canadiens de 18 à 70 ans. Il est financé en partie par répartition.

RÉGIME DE RETRAITE : Régime organisé et administré pour offrir à vie un revenu régulier aux participants retraités; parmi les autres prestations possibles, mentionnons celles d'invalidité permanente, de décès, etc. (Voir aussi Rente)

RÉGIME DE RETRAITE MULTI-EMPLOYEURS (RRME) : Régime de retraite groupant les employés d'au moins deux employeurs, habituellement dans le cadre d'une entente avec un syndicat ou un groupe de syndicats. On dit aussi «inter-entreprises» ou «multi-patronal».

RÉGIME (DE RETRAITE) PAR RÉPARTITION : Terme appliqué à des prestations non capitalisées sauf lorsqu'elles sont versées aux participants, c.-à-d. que les paiements proviennent des recettes courantes ou d'autres sources extérieures au régime proprement dit. Un régime par répartition modifié possède une caisse modeste, mais n'est pas entièrement capitalisé.

RÉGIME DE RETRAITE SYNDICAL : Régime parrainé par un syndicat; s'entend habituellement d'un régime alimenté à même les cotisations syndicales, mais peut aussi désigner un régime financé par les cotisations de l'employeur. (Voir Régime multi-employeurs)

RÉGIME DE REVENU ANNUEL GARANTI (RRAG) : Programme du gouvernement de l'Ontario fournissant un supplément mensuel de revenu à certains résidents dans le besoin, d'après un montant garanti de revenu annuel total. Les prestations «RRAG-A» s'appliquent aux personnes d'au moins 65 ans; les prestations «RRAG-D» s'adressent aux aveugles et aux personnes handicapées.

PENSION - Generally, any regular periodic payment to a person who has retired from the service of an employer or has met certain age or other conditions for payments under a government pension program. (See also Annuity)

PENSIONABLE EARNINGS - Defined portion of an individual's total earnings, excluding certain bonuses, used in calculating pension entitlement. (See also Year's Maximum Pensionable Earnings (YMPE))

PENSION COMMISSION OF ONTARIO - Commission responsible for administering the Pension Benefits Act, 1987 and regulations under the Act.

PENSION PLAN - A plan organized and administered to provide a regular income for the lifetime of retired members; other benefits that may be provided include payments on permanent disability, death, etc. (See also Annuity)

PLAN MEMBER - Members of a pension plan. (See also Active Members)

PLAN TERMINATION - Discontinuance of an employment pension plan, voluntary or involuntary (e.g., as in bankruptcy); wind-up procedure regulated by Pension Benefits Act, 1987.

POOLED FUND - Funds of two of or more pension plans, held by a financial institution and combined for investment purposes in a single fund, each plan sharing on a pro rata basis in the net income from investments.

POOLING - In pension plans, a term used to describe any method by which certain risks or costs are shared by all members of a group, and certain advantages are gained.

PORTABILITY - Options available to an individual on termination of employment of transferring accumulated pension credits to a registered pension account or to the plan of his or her new employer in order to facilitate retirement planning. Under the Pension Benefits Act, 1987, the employee has these options in addition to the option of a deferred pension from the original plan at normal retirement age. (See also Vesting)

PORTFOLIO - The collection of investments held by a pension fund.

PRESENT VALUE - Amount of money which, if invested today at a given rate of compound interest, would provide a defined benefit commencing at a specified future date.

PRIVATE SECTOR PLAN - An employment pension plan offered by an employer or by employers and unions (multi-employer plan) in the private sector.

PUBLIC SECTOR PLAN - An employment pension plan offered by an employer in the public sector, covering civil servants, teachers, municipal employees, etc.

REGISTERED RETIREMENT SAVINGS PLAN (RRSP)- A personal retirement savings plan, defined in the Income Tax Act, under which tax is deferred on contributions and investment income until income is received as annuity payments.

REPLACEMENT INCOME - Regular payments (e.g., a pension) from a programme whose purpose is to replace income which the individual previously obtained from employment. (See Net Replacement Ratio)

RÉGIME EN FIDUCIE : Régime de retraite professionnel dont les fonds sont conservés et investis par des fiduciaires; le promoteur du régime doit en garantir la solvabilité en y versant des cotisations suffisantes. Les prestations ne sont pas garanties, sauf dans la mesure où les rentes sont acquises.

RÉGIME ENREGISTRÉ D'ÉPARGNE-RETRAITE (REER) : Régime personnel d'épargne retraite défini à la Loi de l'impôt sur le revenu et permettant le report de l'impôt sur les contributions et les recettes d'investissement jusqu'au versement des arrérages.

RÉGIME FIN DE CARRIÈRE : Terme désignant habituellement un régime de retraite où les prestations sont calculées en fonction des gains des dernières années de la carrière du participant.

RÉGIME NON CONTRIBUTIF : Régime dans lequel toutes les cotisations requises sont faites par l'employeur.

RÉGIME PRIVÉ : Régime professionnel offert par un employeur ou par des employeurs et des syndicats (régime multi-employeurs) dans le secteur privé.

RÉGIME PUBLIC : Régime de retraite professionnel offert par un employeur du secteur public et touchant les fonctionnaires, les enseignants, les employés municipaux, etc.

RÉGIME RECONSTITUTION DE CARRIÈRE : Régime à prestations déterminées où l'unité de rente s'applique aux gains du participant à chaque année de service et non aux gains de la dernière année ou à la moyenne des gains des trois ou cinq dernières années.

RENDEMENT DU CAPITAL INVESTI : Gains d'une caisse de retraite, y compris les intérêts sur les valeurs à revenu fixe (obligations, hypothèques, etc.), les participations, les gains de capitaux, etc.

RENTE : Dans le domaine des régimes de retraite, paiements périodiques (habituellement mensuels) versés à vie, en vertu d'un contrat, à une personne (le rentier) ou à cette personne et à ses bénéficiaires désignés; la rente peut être fixe ou variable et peut continuer à être versée pendant un certain après le décès du rentier.

RENTE ACQUISE DIFFÉRÉE : Rente précise fixée à la cessation d'emploi ou à la liquidation d'un régime, mais qui ne peut être versée qu'à une date ultérieure, habituellement à l'âge normal de la retraite. (Voir aussi Acquisition des droits)

RENTE CONSTITUÉE : Montant de la rente créditée à un participant en fonction du service, des gains, etc., jusqu'à une date précise.

RENTE DE RETRAITE : En règle générale, tout paiement périodique versé normalement à une personne qui était au service de l'employeur et a pris sa retraite ou répond à certaines conditions, notamment l'âge atteint, pour avoir droit aux prestations prévues dans un régime de retraite gouvernemental. (Voir aussi Rente)

RENTE DE SURVIVANT : Prestations mensuelles accordées en vertu d'un régime de retraite au conjoint survivant du retraité ou employé décédé; se dit habituellement d'une prestation autre que les versements d'une rente garantie ou réversible.

RENTE D'INVALIDITÉ : Rente à verser à un employé frappé d'incapacité permanente en raison d'un handicap physique ou mental.

RENTE FORFAITAIRE : Prestation déterminée exprimée en dollars de rente mensuelle et non liée au service ou aux gains, mais versée à la retraite lorsque le participant satisfait à certaines conditions d'admissibilité. (Voir, par exemple, Programme de sécurité de la vieillesse.)

RENTE GARANTIE : Rente qui sera versée à une personne sa vie durant ou pendant une certaine

RETIREMENT - Withdrawal from the active work force because of age; may also be used in the sense of permanent withdrawal from the labour force for any reason, including disability.

RETIREMENT INCOME - Income from pension and other sources, to which a retired person is entitled. Term may include both private and public pension payments, income from personal savings, government income supplements, and imputed income (e.g., free health insurance premiums).

RETROACTIVE INFLATION PROTECTION - Applies to existing retirees, and current deferreds once they retire, as of the date of the legislation and to the level of pension payments they receive as of that date. It also applies to the past service credits of current retirees. This does not result in "catch-up" indexation for the inflation experienced prior to the effective date.

SALARY SCALE - In pension costing, an estimate of future increases in wages and salaries of plan members whose benefits are based on earnings.

SOCIAL SECURITY - Term used to refer to a system of government programmes providing for income security of individuals, especially the aged, disabled, etc. In Canada, the term as applied to the elderly usually includes Old Age Security, income supplements (federal and provincial), the Canada and Quebec Pension Plans; may include other income support programmes.

SOLVENCY - In a pension plan, the ability of the plan to meet its present and future obligations; the adequacy of provisions for funding.

SOLVENCY VALUATION - A valuation or calculation of plan assets and liabilities based on the assumption that the plan terminated at the date of valuation. Also referred to as a "wind-up" or "termination" valuation.

SPOUSE - For the purpose of credit splitting, survivor benefits, etc., either a man or a woman who: a) are married to each other, or b) are not married to each other and are living together in a conjugal relationship, i) continuously for a period of not less than three years, or, ii) in a relationship of some permanence, if they are natural or adoptive parents of a child, both as defined in the Family Law Act, 1986.

SPOUSE'S ALLOWANCE - Under the Old Age Security Act, a monthly payment, based on family income, payable to the spouse, widow or widower aged 60 to 65 of an OAS pensioner. In 1984 this benefit was extended to all widows and widowers aged 60-65.

STACKING - Term sometimes used for a pension design in which there is no integration between benefits provided under employment pension plans and benefits provided under public retirement income programs so that plan contributions and benefits are not related to those in any government pension program.

SURVIVOR PENSION - A monthly benefit payable under a pension plan to the surviving spouse of a deceased employee or pensioner; usually refers to a benefit other than payments under the guaranteed annuity or joint survivor annuity provision.

SURVIVOR BENEFIT - Generally, any benefit payable under a pension plan to the surviving spouse of a plan member who dies before or after retirement.

période, à l'éventualité la plus favorable, mais au moins pour une période minimale; par exemple, si le rentier meurt après trois ans, on continuera à effectuer des versements au bénéficiaire ou à la succession pendant deux ans. (Voir aussi Prestation de survivant)

RENTE NORMALE : Montant de la rente, d'après la formule de calcul des prestations, à laquelle l'employé a ou aura droit à l'âge normal de la retraite, d'après les gains et/ou les années de service.

RENTE RÉVERSIBLE : Rente payable jusqu'au décès de l'employé retraité et allant par la suite au survivant (veuf ou veuve) jusqu'à la mort de ce dernier. Elle doit être offerte de façon facultative au moment du départ à la retraite; sa valeur peut demeurer égale à la rente du retraité ou être réduite à son décès.

REPORT D'IMPÔT : Disposition de la Loi de l'impôt sur le revenu en vertu de laquelle certaines rentes et autres contributions analogues donnent droit à un dégrèvement d'impôt et où les cotisations et les recettes d'investissement de l'employeur ne figurent pas dans le revenu imposable actuel du participant; cependant, les prestations versées sont considérées comme un revenu imposable dans l'année où elles sont reçues.

RETRAIT EN ESPÈCES : À la cessation d'emploi, remboursement au participant de ses cotisations au régime.

RETRAITE : Retrait du monde du travail en raison de l'âge; peut aussi s'entendre d'un retrait permanent du monde du travail pour toute autre raison, notamment l'invalidité.

RETRAITE ANTICIPÉE : Disposition de la loi ou d'un régime de retraite permettant le départ à la retraite avant l'âge normal. Le montant de la rente créditée en vertu de la formule du régime peut être réduit en fonction de l'âge atteint par le participant; il se peut que la rente ne soit pas réduite, si le participant répond à certaines conditions de service (ex. : 30 ans) (Voir aussi Retraite spéciale)

REVALORISATION PONCTUELLE : Montant ajouté à la rente après le départ à la retraite pour compenser les augmentations du coût de la vie, ou accordées occasionnellement et non par suite d'engagement ou entente contractuelle antérieure. À distinguer de l'indexation officielle.

REVENU DE REMPLACEMENT : Versements périodiques (p. ex. une rente) d'un programme dont l'objet est de remplacer le revenu tiré antérieurement de l'emploi. (Voir Taux net de remplacement)

REVENU DE RETRAITE : Revenu provenant de la rente et d'autres sources et auquel le retraité a droit; peut englober les prestations de régimes de retraite publics et privés, le revenu de l'épargne personnelle, les suppléments de revenu du gouvernement et les gains fictifs (p. ex. gratuité des primes d'assurance-maladie).

SALAIRE MINIMUM : Taux de rémunération minimum que l'employeur peut verser à un employé selon la loi provinciale ou fédérale applicable en matière de salaire minimum.

SALAIRE MOYEN (DANS L'INDUSTRIE) : Voir Ensemble des activités économiques.

SÉCURITÉ SOCIALE : Terme utilisé pour désigner un système de programmes gouvernementaux de sécurité du revenu des personnes, particulièrement les personnes âgées, handicapées, etc. Au Canada, dans son application aux personnes âgées, il comprend le Programme de sécurité de la vieillesse, les suppléments de revenu (fédéral et provinciaux) le Régime de pensions du Canada et le Régime des rentes du Québec; la notion peut aussi regrouper d'autres programmes de soutien du revenu.

TAX CREDIT - Provision for a reduction of income tax payable (not deduction from taxable income) by an amount of other taxes payable or a portion of housing or other expenses of the taxpayer; in the case where a person has no taxable income, the credit effectively represents a return.

TAX DEFERRAL - Provision in the Income Tax Act whereby certain pension and similar contributions are tax-deductible and employer contributions and investment income are not included in a member's current taxable income; but benefit payments are considered income for tax purposes in the year in which they are received.

TERMINATION OF EMPLOYMENT - Severance of the employment relationship for any reason other than death and retirement.

TERMINATION RATES - In pension costing, the observed or estimated rate of termination of employment for reasons other than death and retirement.

TRUST AGREEMENT (OR DEED) - An agreement setting out the duties and responsibilities of a trustee or trustees under the pension plan.

TRUSTEE PENSION PLAN - An employment pension whose funds are held and invested by trustees, and the plan sponsor is responsible for making sufficient contributions to provide for solvency. Benefits are not insured except to the extent annuities are purchased.

UNFUNDED LIABILITY (UNFUNDED ACTUARIAL LIABILITY) - Generally, any amount by which the assets of a pension plan are less than its liabilities. An initial unfunded liability exists when benefits are created in respect of prior service and not provided for in current service contributions. (See also Experience Deficiency; Funding)

UNION PENSION - Plan sponsored by a trade union; usually refers to a dues-paid plan but may mean plan financed by employer contributions. (See Multi-Employer Plan)

UNISEX MORTALITY TABLE - Mortality table in which estimates of death rates for males and females are combined in a single table.

UPDATING (BENEFITS) - Term applied to the occasional review and increase of accrued benefits to reflect rising wage levels where the plan does not provide for automatic improvement as in final (earnings) formula.

VESTED BENEFITS (VESTING) - Benefits to which an employee is entitled under the plan as a result of age or service; usually requires locking in of contributions as a result of membership in the plan for a specified period of time (2 years under the Pension Benefits Act, 1987).

WINDING UP (OR WIND-UP) - See Plan Termination

YEAR'S MAXIMUM PENSIONABLE EARNINGS (YMPE) - Term used in the Canada Pension Plan, which refers to as the earnings from employment on which CPP contributions and benefits are calculated. YMPE is changed each year according to a formula based on average wage levels.

SERVICE ININTERROMPU : Période pendant laquelle l'employé reste avec le même employeur; le terme peut être défini dans un régime (ou une loi) pour inclure certaines périodes d'absence et/ou de service chez un employeur associé ou précédent. Ne pas confondre avec Années décomptées.

SERVICE PASSÉ : Période de service accumulée par un employé avant de devenir participant du régime; terme parfois utilisé pour définir certaines prestations qui diffèrent de celles du service courant (service futur). (Voir aussi Passif non capitalisé)

SOLVABILITÉ : Capacité d'un régime de retraite de répondre à ses obligations actuelles et futures; adéquation des mécanismes de provisionnement.

SUPPLÉMENT DE REVENU GARANTI (SRG) : Mensualité versée en vertu de la Loi sur la sécurité de la vieillesse aux récipiendaires d'une rente PSV qui sont dans le besoin, d'après un revenu minimum garanti. (Voir Programme de sécurité de la vieillesse, Régime de revenu annuel garanti ou RRAG, Allocation au conjoint)

TABLE UNISEXE DE MORTALITÉ : Table de mortalité où sont combinés les taux de mortalité des hommes et des femmes.

TAUX DE SORTIE : Pour l'établissement du coût d'un régime, taux observé ou estimatif de cessation d'emploi pour des motifs autres que le décès ou la retraite.

TAUX NET DE REMPLACEMENT : Mesure de l'adéquation du revenu de retraite en établissant un rapport avec le revenu précédant immédiatement le départ à la retraite, compte tenu de l'impôt sur le revenu, des crédits d'impôt, etc.

TITULAIRE DE RENTE DIFFÉRÉE : Ancien employé admissible à une rente acquise différée (voir ce terme).

TRANSFÉRABILITÉ : Possibilité offerte à la personne, à la cessation d'emploi, de transférer les crédits de rente accumulés à un compte de retraite enregistré ou au régime du nouvel employeur, pour faciliter la planification de la retraite. En vertu de la Loi de 1987 sur les régimes de retraite, l'employé a, en plus de ces possibilités, le choix d'opter pour une rente différée du régime initial, à l'âge normal de la retraite. (Voir aussi Acquisition)

VALEUR ACTUALISÉE : Montant d'un versement forfaitaire immédiat réputé d'égale valeur à une série de versements futurs. On dit parfois «valeur de rachat». (Voir aussi Valeur actuelle)

VALEUR ACTUELLE : Montant d'argent qui, investi maintenant à un taux donné d'intérêt composé, donnerait une prestation déterminée à compter de telle date à venir.

APPENDIX B

DISTRIBUTION OF PENSION PLAN MEMBERS IN THE PROVINCES AND TERRITORIES BY PUBLIC AND PRIVATE SECTOR, 1986

GEOGRAPHIC AREA	PUBLIC SECTOR		PRIVATE SECTOR		BOTH SECTORS	
	MEMBERS	PERCENTAGE OF PUBLIC SECTORS	MEMBERS	PERCENTAGE OF PRIVATE SECTOR	MEMBERS	PERCENTAGE OF BOTH SECTORS
NEWFOUNDLAND	45,271	2.1	26,321	1.0	71,592	1.5
PRINCE EDWARD ISLAND	10,257	0.4	4,752	0.1	15,009	0.3
NOVA SCOTIA	86,965	4.1	59,928	2.3	146,893	3.1
NEW BRUNSWICK	57,584	2.7	51,664	2.0	109,256	2.3
QUEBEC	543,137	26.0	586,768	22.7	1,129,905	24.2
ONTARIO	691,867	33.1	1,145,321	44.3	1,836,998	39.3
MANITOBA	103,737	4.9	91,058	3.5	194,795	4.2
SASKATCHEWAN	94,693	4.5	63,595	2.4	158,288	3.4
ALBERTA	210,219	10.0	226,717	8.7	436,936	9.4
BRITISH COLUMBIA	217,023	10.4	303,606	11.7	520,629	11.2
YUKON AND NORTH WEST TERRITORIES	11,183	0.5	3,162	0.1	14,345	0.3
OUTSIDE CANADA	14,480	0.6	19,263	0.7	33,743	0.7
TOTAL	2,096,206	100.0	2,582,175	100.0	4,668,381	100.0

Source: Statistics Canada, Pension Plans in Canada, 1986, Catalogue 74-451.

ANNEXE B

DISTRIBUTION DES PARTICIPANTS DES RÉGIMES DE RETRAITE AU CANADA

RÉGION GÉOGRAHIQUE	SECTEUR PUBLIC		SECTEUR PRIVÉ		ENSEMBLE	
	PARTICIPANTS	POURCENTAGE SECTEUR PUBLIC	PARTICIPANTS	POURCENTAGE SECTEUR PRIVÉ	PARTICIPANTS	POURCENTAGE GLOBAL
TERRE-NEUVE	45 271	2,1	26 321	1,0	71 592	1,5
ÎLE-DU-PRINCE-ÉDOUARD	10 257	0,4	4 752	0,1	15 009	0,3
NOUVELLE-ÉCOSSE	86 965	4,1	59 928	2,3	146 893	3,1
NOUVEAU-BRUNSWICK	57 594	2,7	51 664	2,0	109 258	2,3
QUÉBEC	543 137	26,0	586 768	22,7	1 129 905	24,2
ONTARIO	691 667	33,1	1 145 321	44,3	1 836 988	39,3
MANITOBA	103 737	4,6	91 058	3,5	194 795	4,2
SASKATCHEWAN	94 693	4,5	63 595	2,4	158 288	3,4
ALBERTA	210 219	10,0	226 717	8,7	436 936	9,4
COLOMBIE-BRITANNIQUE	217 023	10,4	303 606	11,7	520 629	11,2
YUKON ET TERRITOIRES DU NORD-OUEST	11 163	0,5	3 182	0,1	14 345	0,3
EXTÉRIEUR DU CANADA	14 480	0,6	19 263	0,7	33 743	0,7
TOTAL	2 066 206	100,0	2 582 175	100,0	4 668 381	100,0

Source : Statistique Canada, Régimes de pension au Canada, 1986, Catalogue 74-451.

APPENDIX C

ONTARIO PENSION PLAN PARTICIPATION TRENDS 1977-1987

YEAR	NUMBER OF PLAN MEMBERS	PERCENTAGE OF LABOUR FORCE	PERCENTAGE OF EMPLOYED PAID WORKERS
1977	1,608,000	40.3	48.1
1978	1,669,000	40.3	49.2
1979	1,726,000	40.4	49.4
1980	1,759,000	40.4	48.1
1981	1,664,000	37.3	45.1
1982	1,793,000	40.0	46.6
1983	1,785,000	39.1	46.9
1984	1,787,000	38.3	47.6
1985	1,817,000	38.0	47.1
1986	1,837,000	37.5	45.6
1987	1,868,000	37.6	44.5

Source: Statistics Canada, The Labour Force, Catalogue 71-001; Statistics Canada, Pension Division, and the Pension Commission of Ontario.

ANNEXE C

STATISTIQUE DE PARTICIPATION AUX RÉGIMES DE RETRAITE DE L'ONTARIO 1977-1987

ANNÉE	NOMBRE DE PARTICIPANTS	POURCENTAGE DE LA MAIN-D'OEUVRE	POURCENTAGE DES SALARIÉS
1977	1 608 000	40,3	48,1
1978	1 669 000	40,3	49,2
1979	1 726 000	40,4	49,4
1980	1 759 000	40,4	48,1
1981	1 664 000	37,3	45,1
1982	1 793 000	40,0	46,6
1983	1 785 000	39,1	46,9
1984	1 787 000	38,3	47,6
1985	1 817 000	38,0	47,1
1986	1 837 000	37,5	45,6
1987	1 868 000	37,6	44,5

Source : Statistique Canada, La population active, n° de catalogue 71-001; Statistique Canada, Section des pensions, ainsi que la Commission des régimes de retraite de l'Ontario.

APPENDIX D

EROSION OF REAL VALUE OF A NON-INDEXED PENSION

YEAR	AMOUNT	CONSUMER PRICE INDEX (%)
1970	$ 1,000	3.3%
1971	972	2.9
1972	928	4.7
1973	862	7.7
1974	777	10.9
1975	701	10.8
1976	652	7.5
1977	605	7.9
1978	556	8.8
1979	509	9.2
1980	462	10.2
1981	411	12.5
1982	371	10.8
1983	350	5.8
1984	335	4.4
1985	323	4.0
1986	310	4.1
1987	297	4.4
1988	285	4.1

Source: Based on Consumer Price Index. Statistics Canada, Consumer Price Index, Catalogue 62-001.

ANNEXE D

ÉROSION DE LA VALEUR RÉELLE D'UNE RENTE NON INDEXÉE

ANNÉE	MONTANT	INDICE DES PRIX À LA CONSOMMATION (%)
1970	1 000 $	3,3 %
1971	972	2,9
1972	928	4,7
1973	862	7,7
1974	777	10,9
1975	701	10,8
1976	652	7,5
1977	605	7,9
1978	556	8,8
1979	509	9,2
1980	462	10,2
1981	411	12,5
1982	371	10,8
1983	350	5,8
1984	335	4,4
1985	323	4,0
1986	310	4,1
1987	297	4,4
1988	285	4,1

Source : D'après l'Indice des prix à la consommation, Statistique Canada, Indice des prix à la consommation, catalogue 62-001.

APPENDIX E

The terms of reference of the Friedland Task Force on Inflation Protection of Employment Pension Plans were:

"WHEREAS the Ontario government supports the principle of mandatory inflation protection;

AND WHEREAS there are no existing models for mandatory inflation protection in place in any Canadian jurisdiction;

AND WHEREAS numerous formulas for inflation protection, with a variety of funding mechanisms, have been presented by various studies;

AND WHEREAS Ontario has a responsibility as the first province to commit to taking action on inflation protection, to ensure that the direction given for implementation is well reasoned and effective."

The Task Force was established, "to ensure that the direction given for implementation is well reasoned and effective" and specifically "to determine the most appropriate formula and phase-in procedures for inflation protection" taking into consideration:

"The needs of employees to have retirement income protected from the effects of inflation;

The needs of employers to have finite and affordable pension costs;

The importance of maintaining and expanding the private pension system and, in particular, defined benefit plans;

The impact of any formula on active employees, existing pensioners and deferred pensioners;

The formulae and recommendations contained in previous pension studies relating to inflation protection from Canadian jurisdictions;

Initiatives studied by other jurisdictions and any formulae currently used in pension plans;

The relationship between inflation protection and other pension reform items or issues in the Pension Benefits Act, 1987, such as the 50% employer cost, treatment of surplus, portability and vesting;

The appropriate time period to be provided to plan sponsors to fully fund inflation protection."

ANNEXE E

Voici quel était le mandat du Groupe d'étude de la protection des régimes de retraite des salaires contre l'inflation dirigé par M. Friedland :

«ATTENDU que le gouvernement de l'Ontario appuie le principe de la protection obligatoire contre l'inflation;

ATTENDU qu'il n'y a pas encore de modèle de protection-inflation obligatoire ailleurs au Canada;

ATTENDU que les auteurs de diverses études ont présenté de nombreuses formules de protection-inflation et une gamme de mécanismes de financement, et

ATTENDU que l'Ontario a la responsabilité, en tant que première province à s'engager à prendre des mesures de protection-inflation, de veiller à ce que l'orientation imprimée à la mise en application de ces mesures soit réfléchie et efficace.»

Le Groupe d'étude a été créé dans le but «de veiller à ce que l'orientation imprimée à la mise en application des mesures soit réfléchie et efficace» et plus précisément «d'établir ce qui était le plus approprié comme formule et comme modalités d'introduction graduelle de la protection-inflation», en approfondissant les facteurs suivants :

«Le besoin des employés de disposer d'un revenu de retraite protégé des effets de l'inflation;

Le besoin des employeurs, pour lesquels les coûts du régime doivent être déterminés et raisonnables;

L'importance du maintien ou de l'élargissement du système privé, notamment des régimes à prestations déterminées;

Les répercussions de telle ou telle formule sur les employés actifs, les pensionnés actuels et les titulaires de rentes différées;

Les formules et recommandations contenues dans les études réalisées antérieurement et touchant la protection-inflation des pensions accordées par les autres paliers de compétence au Canada;

Les initiatives étudiées par d'autres compétences et les formules utilisées actuellement dans les régimes de retraite;

Les rapports entre la protection contre l'inflation et les autres réformes ou questions en matière de régimes de retraite, dans la Loi de 1987 sur les régimes de retraite, par exemple la quote-part de l'employeur, le traitement de l'excédent, la transférabilité et la dévolution des droits;

La période appropriée à accorder aux promoteurs pour capitaliser entièrement la protection-inflation.»

APPENDIX F

RECOMMENDATIONS OF THE REPORT OF THE TASK FORCE ON INFLATION PROTECTION FOR EMPLOYMENT PENSION PLANS

RECOMMENDATION 1: A CPI-linked formula should be selected as the legislated minimum standard for inflation protection.

RECOMMENDATION 2: The formula (75% of CPI) - 1% should be the legislated minimum standard.

RECOMMENDATION 3: The maximum annual CPI increase to be recognized in the pension adjustments should be 10%, with the excess adjustment in years when the CPI increase is more than 10% being carried forward to years in which the CPI increase is less than 10%.

RECOMMENDATION 4: Negative inflation should be taken into account to decrease subsequent adjustments.

RECOMMENDATION 5: The adjustment should take place at least once a year.

RECOMMENDATION 6: Legislation should permit alternative arrangements that offer actuarially better inflation protection than the recommended standard of (75% of CPI) - 1%.

RECOMMENDATION 7: The Pension Commission of Ontario should develop regulations and guidelines to assist plan sponsors and their actuaries in determining what arrangements would be considered to offer actuarially better inflation protection than the standard of (75% of CPI) - 1%.

RECOMMENDATION 8: Legislation should require that adjustments for inflation protection begin at the later of the age of retirement or age 55.

RECOMMENDATION 9: The formula (75% of CPI) - 1% should apply to deferred pensioners as a minimum legislated standard.

ANNEXE F

RECOMMANDATIONS DU GROUPE D'ÉTUDE DE LA PROTECTION DES RÉGIMES DE RETRAITE DES SALAIRES CONTRE L'INFLATION

RECOMMANDATION 1 : Il faut choisir comme norme minimale de protection-inflation prévue par la loi une formule indexée à l'IPC.

RECOMMANDATION 2 : La norme minimale prescrite par la loi devrait être la formule (75 % de l'IPC) - 1 %.

RECOMMANDATION 3 : L'augmentation maximale annuelle de l'IPC dont il faut tenir compte dans le redressement des pensions devrait être de 10 % et l'ajustement excédentaire, dans les années où l'augmentation de l'IPC est supérieure à 10 %, doit être reporté aux années où la hausse de l'IPC est inférieure à 10 %.

RECOMMANDATION 4 : Il faut tenir compte de la désinflation pour réduire les ajustements subséquents.

RECOMMANDATION 5 : L'ajustement doit avoir lieu au moins une fois l'an.

RECOMMANDATION 6 : La loi devrait autoriser d'autres méthodes offrant une protection-inflation actuariellement meilleure que la norme (75 % de l'IPC) - 1 % recommandée.

RECOMMANDATION 7 : La Commission des régimes de retraite de l'Ontario doit préparer un règlement et des lignes directrices afin d'aider les promoteurs et les actuaires à préciser les modalités qui pourraient être considérées comme offrant une protection-inflation actuariellement meilleure que la norme de (75 % de l'IPC) - 1 %.

RECOMMANDATION 8 : La loi doit stipuler que l'indexation commence à l'âge de la retraite ou à 55 ans, à l'éventualité la plus tardive.

RECOMMANDATION 9 : La formule (75 % de l'IPC) - 1 % devrait être la norme minimale prévue par la loi à l'endroit des titulaires de rentes différées.

RECOMMANDATION 10 : La loi doit autoriser, à l'endroit des titulaires de rentes différées, d'autres modalités offrant une protection-inflation actuariellement

RECOMMENDATION 10: Legislation should permit alternative arrangements for deferred pensioners that offer actuarially better inflation protection than the recommended standard of (75% of CPI) - 1%.

RECOMMENDATION 11: The 50% employer contribution rule should be retained during the deferment period unless the plan sponsor applies inflation protection retroactivity to deferred pensioners.

RECOMMENDATION 12: Deferred pensions less than the value of one-tenth of the Average Industrial Wage at the time of termination should be allowed to remain in the plan only with the sponsor's consent.

RECOMMENDATION 13: Sponsors of money purchase plans should be required to offer indexed annuities to retiring employees as an option.

RECOMMENDATION 14: The Ontario government should introduce the sale of indexed bonds.

RECOMMENDATION 15: Employer-sponsored group RRSPs should be covered by the Ontario Pension Benefits Act (and should be required to offer indexed annuities as an option).

RECOMMENDATION 16: Employer-sponsored RRSP group plans with under 15 members should be exempt from the Pension Benefits Act.

RECOMMENDATION 17: The federal and provincial governments should give careful consideration to locking-in before and after retirement at least part of the sum accumulated in individual RRSPs.

RECOMMENDATION 18: Inflation protection legislation should commence at the end of any current collective agreement for the applicable employees, at which point it should be made retroactive to the date of the implementation of the inflation protection legislation.

RECOMMENDATION 19: Mandatory inflation protection should apply to multi-employer pension plans.

RECOMMENDATION 20: Inflation protection legislation for multi-employer plans should commence two years after the date of implementation.

meilleure que la norme de (75 % de l'IPC) - 1 % recommandée.

RECOMMANDATION 11 : La règle de la quote-part de l'employeur doit être maintenue dans la période du différé, sauf si le promoteur applique rétroactivement l'indexation aux titulaires de rentes différées.

RECOMMANDATION 12 : Les rentes différées dont la valeur est inférieure au dixième du salaire moyen de l'industrie à la cessation d'emploi devraient pouvoir demeurer dans le régime si le promoteur y consent.

RECOMMANDATION 13 : Les promoteurs des régimes à cotisations déterminées devraient être tenus d'offrir aux employés qui prennent leur retraite la possibilité d'acquérir une rente indexée.

RECOMMANDATION 14 : Le gouvernement de l'Ontario doit introduire sur le marché des obligations indexées.

RECOMMANDATION 15 : Les REER collectifs professionnels doivent être régis par la Loi sur les régimes de retraite de l'Ontario (et être tenus d'offrir en option l'acquisition d'une rente indexée).

RECOMMANDATION 16 : Les REER collectifs professionnels de moins de 15 membres doivent être exemptés de la Loi sur les régimes de retraite.

RECOMMANDATION 17 : Le fédéral et la province doivent sérieusement envisager d'immobiliser, avant et après la retraite, au moins une partie des fonds accumulés dans les REER personnels.

RECOMMANDATION 18 : La législation de protection contre l'inflation doit s'appliquer à l'échéance de toute convention collective en vigueur, dans le cas des employés touchés, après quoi elle devra devenir rétroactive à la date de mise en application de la législation susdite.

RECOMMANDATION 19 : La protection obligatoire contre l'inflation devrait s'appliquer aux régimes de retraite multi-employeurs.

RECOMMANDATION 20 : Pour les régimes multi-employeurs, la législation de protection contre l'inflation s'appliquera deux ans après son entrée en vigueur.

RECOMMANDATION 21 : La protection-inflation ne doit être obligatoire qu'à l'égard des prestations qui seront acquises, mais il faudrait inciter les promoteurs à accorder des augmentations aux retraités. En

RECOMMENDATION 21: Inflation protection should be required for future earned benefits only, but sponsors should be encouraged to grant increases to retireds. Therefore, the sponsor should be permitted to choose the following phase-in period applicable to retireds (including deferreds who have retired) and to the past credits of active workers:
(75% of CPI) - 2 1/2% for the first five years;
(75% of CPI) - 2% for the next five years for future benefits and permanently for the retroactive component;
(75% of CPI) - 1 1/2% for the next five years for future benefits;
(75% of CPI) - 1% thereafter for future benefits.

RECOMMENDATION 22: Plan sponsors who choose to grant retroactive increases should be permitted to commence inflation protection at the age of 65, and they may apply a cap with a rollover when the CPI increase exceeds 8% (rather than 10%).

RECOMMENDATION 23: A more liberal initial 25-year amortization period be permitted for sponsors who grant retroactive increases.

RECOMMENDATION 24: A plan sponsor who funds adequate inflation protection for accrued credits for actives, retireds, and deferreds may withdraw and keep any surplus funds, unless the plan document prohibits withdrawal. This recommendation should apply to existing surplus funds as well as future surplus funds.

RECOMMENDATION 25: Before surplus can be withdrawn under Recommendation 24, inflation protection should be provided retroactively and funded using the formula of (75% of CPI) - 2%.

RECOMMENDATION 26: The foregoing recommendation would continue to permit the plan sponsor to make the short-term funding decisions, (in contrast to the withdrawal of funds), subject of course to the funding regulations under the Ontario Pension Benefits Act.

RECOMMENDATION 27: Plans terminated after December 1, 1987, should not be entitled to withdraw surplus funds until adequate inflation protection as described in Recommendation 25 has been provided.

RECOMMENDATION 28: The GAINS program should not have payments reduced by the inflation protection component of employment pension plans.

conséquence, le promoteur devrait être autorisé à choisir, à l'égard des retraités (titulaires de rentes différées compris) et des crédits antérieurs des travailleurs actifs, la période d'introduction suivante :
(75 % de l'IPC) - 2,5 %, les cinq premières années;
(75 % de l'IPC) - 2 %, les cinq années suivantes, à l'égard des prestations futures et en permanence pour l'élément rétroactif;
(75 % de l'IPC) - 1,5 %, les cinq années suivantes, à l'égard des prestations futures;
(75 % de l'IPC) - 1 % par la suite, à l'égard des prestations futures.

RECOMMANDATION 22 : Les promoteurs qui décident d'accorder des prestations rétroactives devraient être autorisés à indexer à 65 ans et pourraient avoir recours à un plafond avec report, si l'augmentation de l'IPC dépasse 8 % (plutôt que 10 %).

RECOMMANDATION 23 : Qu'on autorise les promoteurs qui accordent des augmentations rétroactives à recourir à une période initiale plus souple d'amortissement sur 25 ans.

RECOMMANDATION 24 : Le promoteur qui constitue une provision d'indexation adéquate des crédits constitués des travailleurs actifs, des retraités et des titulaires de rentes différées peut retirer et conserver les fonds excédentaires, sauf si les documents du régime interdisent les retraits. Cette recommandation doit s'appliquer aux excédents tant actuels que futurs.

RECOMMANDATION 25 : Avant qu'un excédent puisse être retiré conformément à la recommandation 24, il doit y avoir eu indexation rétroactive provisionnée selon la formule de (75 % de l'IPC) - 2 %.

RECOMMANDATION 26 : Que l'on conserve au promoteur du régime le droit de prendre les décisions sur le financement à court terme (par opposition aux retraits de fonds) sous réserve évidemment de respecter les règles de financement de la Loi sur les régimes de retraite de l'Ontario.

RECOMMANDATION 27 : Les régimes qui ont cessé d'exister après le 1er décembre 1987 ne devraient pas avoir le droit de retirer des fonds excédentaires, à moins qu'une indexation adéquate ait été accordée conformément à la recommandation 25.

RECOMMANDATION 28 : Les versements du programme RRAG ne devraient pas être réduits par l'élément protection-inflation des régimes professionnels.

APPENDIX G

PENSION PLANS BY TYPE AND PLAN MEMBERSHIP IN THE PUBLIC AND PRIVATE SECTORS IN ONTARIO 1987

	PRIVATE SECTOR		PUBLIC SECTOR		BOTH SECTORS	
	PLANS (% OF TOTAL)	MEMBERS (% OF TOTAL)	PLANS (% OF TOTAL)	MEMBERS (% OF TOTAL)	PLANS (% OF TOTAL)	MEMBERS (% OF TOTAL)
DEFINED CONTRIBUTION PLANS						
MONEY PURCHASE	48.5	8.5	94.3	0.4	48.5	5.6
PROFIT SHARING	2.4	0.7	-	-	2.4	0.5
SUB TOTAL	50.9	9.2	94.3	0.4	50.9	6.1
DEFINED BENEFIT PLANS						
FINAL EARNINGS*	20.8	32.4	38.0	97.6	21.1	56.6
CAREER AVERAGE	17.0	17.7	6.6	1.9	16.8	12.2
FLAT BENEFIT	8.5	15.2	1.1	0.1	8.4	14.4
SUB TOTAL	46.3	65.2	45.7	99.6	46.3	83.2
OTHERS**	2.8	25.5	-	-	2.8	10.7
TOTAL %	100.0	100.0	100.0	100.0	100.0	100.0
TOTAL NO.	10,751	1,174,418	175	693,153	10,926	1,867,571

* Includes Final Average Earnings and Average Best Earnings Plans
** Includes Multi-Employer Plans and Hybrids

Source: Statistics Canada, Unpublished Data

ANNEXE G

RÉGIMES DE RETRAITE PRIVÉS ET PUBLICS EN ONTARIO, PAR TYPE ET NOMBRE D'ADHÉRENTS, 1967

	SECTEUR PRIVÉ		SECTEUR PUBLIC		COMBINÉ	
	RÉGIMES (% DU TOTAL)	PARTICIPANTS (% DU TOTAL)	RÉGIMES (% DU TOTAL)	PARTICIPANTS (% DU TOTAL)	PARTICIPANTS (% DU TOTAL)	(% DU TOTAL)
COTISATIONS DÉTERMINÉES						
RÉGIMES D'ACHAT	48,5	8,5	54,3	0,4	48,5	5,8
PARTAGE DES BÉNÉFICES	2,4	0,7	-	-	2,4	0,5
SOUS-TOTAL	50,9	9,2	54,3	0,4	50,9	6,1
PRESTATIONS DÉTERMINÉES						
FIN DE CARRIÈRE*	20,8	32,4	36,0	97,6	21,1	66,6
RECONSTITUTION DE CARRIÈRE	17,0	17,7	8,6	1,9	16,9	12,2
PRESTATIONS FORFAITAIRES	8,5	15,2	1,1	0,1	8,4	14,4
SOUS-TOTAL	46,3	65,2	45,7	99,6	46,3	93,2
AUTRES**	2,8	25,5	-	-	2,8	10,7
TOTAL	100,0	100,0	100,0	100,0	100,0	100,0
NOMBRE TOTAL	10 751	1 174 418	175	693 153	10 926	1 867 571

* Comprend les régimes «gains ultimes moyens» et «moyenne des meilleures années»

** Comprend les régimes multi-employeurs et hybrides

Source : Statistique Canada, données non publiées

A consolidation of the *Pension Benefits Act, 1987* incorporating proposed amendments

CONTENTS

Section

1. Definitions

APPLICATION

2. Crown bound
3. Employees in Ontario
4. Place of employment
5. Greater pension benefits

REGISTRATION AND ADMINISTRATION

6. Prohibition of administration of unregistered pension plan
7. Refusal or revocation
8. Administrator
9. Application for registration
10. Contents of pension plan
11. Gradual and uniform accrual of pension benefits
12. Application for registration of amendment
13. When amendment becomes effective
14. Reduction of benefits
15. Acknowledgment of application for registration
16. Issuance of certificate of registration
16a. Waiver, etc., to be void
17. Issuance of notice of registration
18. Refusal or revocation of registration
19. Conforming amendment
20. Duty of administrator
20a. Superintendent may appoint administrator
21. Administrator's annual information return
22. Reciprocal transfer agreement
23. Care, diligence and skill
24. Information from employer
25. Advisory committee

DISCLOSURE OF INFORMATION

26. Information from administrator
27. Notice of proposed amendment

Section

28. Annual statement of benefits
29. Statement of benefits
30. Inspection of administrator's documents
31. Inspection of filed documents

MEMBERSHIP

32. Eligibility for membership
33. Loss of membership
34. Dispute as to member of class of employees
35. Separate pension plan

RETIREMENT AND VESTING

36. Normal retirement date
37. Deferred pension for past service
38. Deferred pension
38a. Vesting of pension benefits
38b. Payment of pension
39. Termination by member

BENEFITS

40. Value of deferred benefit
41. Ancillary benefits
42. Early retirement option
43. Transfer
44. Purchase of pension
45. Joint and survivor pension
46. Information for payment
47. Waiver of joint and survivor pension benefit
48. Remarriage of spouse
49. Pre-retirement death benefit
50. Variation of payment to disabled person
51. Commuted value
52. Payment on marriage breakdown
52a. Termination of spouse's membership
53. Discrimination on basis of sex
54. Inflation Protection
55. C.P.P./Q.P.P. offsets

Section

ADJUSTMENTS FOR INFLATION

55a. Definitions
55b. Adjustments for inflation
55c. Conforming amendments
55d. Election of retrospective inflation adjustments
55e. Cost limitation
55f. Inflation adjustments, pensions
55g. Inflation adjustments, deferreds
55h. Defined contribution benefits and MEPPs
55i. Retrospective scheme, pensions
55j. Retrospective scheme, deferreds
55k. Retrospective adjustments, pensions-in-pay
55-l. Retrospective adjustments, deferred pensions
55m. Surplus
55n. Surplus and winding up

CONTRIBUTIONS

56. Funding
56a. Refund of overpayment
57. Notice to Superintendent
58. Trust property
59. Accrual
60. Collection of contributions
61. Bond
62. Statement of employer's obligation
63. Investment of pension fund

LOCKING IN

64. Refunds
65. Shorter qualification periods
66. Void transactions
67. Exemption from execution, etc.
68. Commutation or surrender

TERMINATION AND WINDING UP

69. Winding up
70. Winding up order by Superintendent
71. Wind up report
72. Appointment of administrator to wind up
73. Notice of entitlements
74. Determination of benefits and rights
75. Combination of age and years of employment
75a. Notice of termination of employment
76. Liability of employer on wind up
77. Pension fund continues subject to Act and regulations
78. Insufficient pension fund

Section

SURPLUS

79. Payment out of pension fund to employer
80. Continuing pension plan
80a. Wound up pension plan

SALES AND TRANSFERS

81. Continuation of benefits under successor employer
82. Adoption of new pension plan

PENSION BENEFITS GUARANTEE FUND

83. Guarantee Fund continued
84. Guarantee Fund declaration
85. Guaranteed benefits
86. Payments not guaranteed
87. Lien for payment out of Guarantee Fund

ORDERS

88. Order by Superintendent
89. Order by Commission

HEARING AND APPEAL

90. Stated case
91. Appeal from Superintendent's decision
92. Exclusive jurisdiction
93. Quorum and votes
93a. Costs
93b. Exemption from costs
93c. Application of 1986, c. 11
93d. Enforcement
93e. Application of R.S.O. 1980, c. 484

PENSION COMMISSION

94. Commission continued
95. Superintendent
96. Reciprocal agreements
97. Duty of Commission
98. Research
99. Information
100. Security
101. Liability of Commission, etc.
102. Audit
103. Annual report

GENERAL

104. Pension agency
105. Transitional
106. Extension of time
107. Entry and inspection
108. Obstruction
109. Warrant by justice of the peace
110. Offence
111. Penalty
112. Power to restrain

Section
113. Service
114. Time for actions by administrator
Section
115. Conflict
116. Regulations

1.—(1) In this Act, Definitions

"active member", in relation to a pension plan, means a member of the plan who,

(a) has not terminated employment under the plan,

(b) has not been deemed under subsection 74 (1) to have terminated employment under the plan, and

(c) has not exercised his or her entitlement under section 39;

"actuarial present value", in relation to a pension or a benefit, means the value of the pension or benefit calculated in the prescribed manner and as of a fixed date;

"actuary" means a Fellow of the Canadian Institute of Actuaries;

"additional voluntary contribution", in relation to a pension plan, means a contribution made by a member that the member is not required to make and that is used to provide a defined contribution benefit, but does not include a contribution in relation to which the employer is or may be required to make an additional contribution;

"administrator" means the person or persons that administer the pension plan;

"ancillary benefit" means any of the benefits described in subsection 41 (1);

"assets", in relation to an employer, means assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

"benefit" means a pension benefit or an ancillary benefit;

"bridging benefit", in relation to a pension plan, means a member's entitlement to periodic payments under a pension plan for a temporary period after retirement for the purpose of supplementing the member's benefit until the member is eligible to receive benefits under the *Old Age* R.S.C. 1985, c. O-9

Security Act (Canada) or is either eligible for or begins to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*;

R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9

"certified copy" means a copy certified to be a true copy;

"claimant", in relation to a pension plan, means a person other than a member or former member who, as a result of another person's membership at any time in the plan, is or may be entitled to a benefit or right under the plan;

"collective agreement" has the same meaning as in the *Labour Relations Act*;

R.S.O. 1980, c. 228

"Commission" means the Pension Commission of Ontario;

"commuted value", for the purpose of determining the lump sum amount that is equivalent to a pension or a benefit, means the value of the pension or benefit calculated in the prescribed manner and as of a fixed date;

"continuous", in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of lay-off from employment;

"contributory benefit", in relation to a pension plan, means a benefit in respect of which a member is required to make contributions under the pension plan;

"deferred benefit", in relation to a member of a pension plan, means a benefit other than an immediate benefit;

"deferred pension" means a deferred benefit that is in payment;

"deferred profit-sharing pension plan" means a pension plan that provides defined contribution benefits where the contributions of the employer in respect of the benefits vary in accordance with the profits of the employer;

"defined benefit" means a benefit other than a defined contribution benefit;

"defined contribution benefit" means a benefit that is determined solely with reference to, and is provided by, contributions made by or for the credit of a member together with interest thereon and that is determined on an individual account basis;

"designated jurisdiction" means a federal, provincial or territorial jurisdiction in Canada that is prescribed by the regulations as a jurisdiction in which there is in force legislation substantially similar to this Act;

"employee" means a natural person who is employed by an employer;

"employer", in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related;

"file" means file with the Superintendent;

"former member", in relation to a pension plan, means a person other than a member who is or may be entitled to a payment under the pension plan as a result of the person's membership in the plan;

"Guarantee Fund" means the Pension Benefits Guarantee Fund continued by this Act;

"immediate benefit", in relation to a member of a pension plan, means a benefit under the pension plan where payment of the pension in respect of the benefit is to commence not later than the first day of the month following the termination of the employment of the member;

"inactive member", in relation to a pension plan, means a member of the plan other than an active member;

"insurance company" means a corporation authorized to undertake life insurance in Canada;

"joint and survivor pension" means a pension payable for the joint lives of the person entitled to the pension and his or her spouse and thereafter for the life of the survivor of them;

"member", in relation to a pension plan, means a person who is or may be entitled to a benefit or to a refund of the person's contributions under the pension plan as a result of the person's employment;

"Minister" means the member of the Executive Council designated by the Lieutenant Governor in Council for the purposes of this Act;

"multi-employer pension plan" means a pension plan established and maintained for employees of two or more participating employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a benefit in relation to a person's employment with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act, 1982* or a multi-unit pension plan;

1982, c. 4

"multi-unit pension plan" means a prescribed pension plan;

"normal retirement date" means the date or age specified in the pension plan as the normal retirement date of members;

"partial wind up", in relation to a pension plan, means the distribution of the assets related to part of the pension plan after the termination of that part of the plan;

"participating employer", in relation to a multi-employer pension plan or multi-unit pension plan, means an employer whose employees are members of the pension plan;

"pension" means a benefit that is in payment;

"pension benefit", in relation to a member of a pension plan, means the entitlement of the member or of another person upon the death of the member to the periodic amounts provided under the pension plan for the lifetime of the member, but does not include an ancillary benefit;

"pension committee" means a committee that is the administrator of a pension plan;

"pension fund", in relation to a pension plan, means the fund maintained to provide benefits in respect of the pension plan;

"pension plan" means a plan organized and administered to provide benefits for employees and includes a trust that governs or is governed by the plan, but does not include,

(a) an employees' profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),

R.S.C. 1952, c. 148

(b) a plan to provide a retiring allowance as defined in subsection 248 (1) of the *Income Tax Act* (Canada), R.S.C. 1952, c. 148

(c) a plan under which all benefits are provided by contributions made by members, or

(d) any other prescribed type of plan;

"prescribed" means prescribed by the regulations;

"qualification date" means, in respect of Ontario, the 1st day of January, 1965, and, in respect of a designated jurisdiction, the date on which under the law of the designated jurisdiction a pension plan must be registered by the proper authority in the designated jurisdiction;

"reciprocal transfer agreement" means an agreement related to two or more pension plans that provides for the transfer of moneys or credits for employment or both in respect of individual members;

"registration" means registration under this Act;

"regulations" means regulations made under this Act;

"spouse" means either of a man and woman who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act, 1986*; 1986, c. 4

"Superintendent" means Superintendent of Pensions;

"surplus" means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

"termination",

(a) in relation to employment, includes retirement and death, and

(b) in relation to a wind up in whole or in part of a pension plan, means the cessation of the accrual of pensionable service under the plan by members of the plan;

R.S.O. 1980, c. 228

"trade union" has the same meaning as in the *Labour Relations Act*;

"wind up", in relation to a pension plan, means the distribution of the assets of the pension plan after the plan is terminated;

R.S.C. 1985, c. C-8

"Year's Maximum Pensionable Earnings" has the same meaning as in the *Canada Pension Plan*. 1987, c. 35, s. 1.

Trade unions

(2) A trade union shall be deemed to be a person for the purposes of this Act and any proceeding before the Superintendent, the Commission or a court under this Act may be instituted by or against it in its own name.

APPLICATION

Crown bound

2. This Act binds the Crown. 1987, c. 35, s. 2.

Employees in Ontario

3. This Act applies to every pension plan that is provided for persons employed in Ontario. 1987, c. 35, s. 3.

Place of employment

4.—(1) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his or her employer is located and to which the person is required to report for work.

Idem

(2) A person who is not required to report for work at an establishment of his or her employer shall be deemed to be employed in the province in which is located the establishment of his or her employer from which the person's remuneration is paid. 1987, c. 35, s. 4.

Greater benefits

5. The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide benefits more advantageous to members than those required by this Act and the regulations. 1987, c. 35, s. 5.

REGISTRATION AND ADMINISTRATION

Prohibition of administration of unregistered pension plan

6.—(1) No person shall administer a pension plan unless a certificate of registration or an acknowledgment of application for registration of the pension plan has been issued by the Superintendent.

(2) Subsection (1) does not apply to prevent administration during the first ninety days after the establishment of the pension plan. 1987, c. 35, s. 6. Application of subs. (1)

7.—(1) No person shall administer a pension plan if registration of the pension plan has been refused or revoked by the Superintendent. Refusal or revocation

(2) Subsection (1) does not apply to prevent administration for the purpose of wind up of a pension plan. 1987, c. 35, s. 7. Exception

8.—(1) A pension plan is not eligible for registration unless it is administered by an administrator who is, Administrator

(a) the employer or employers;

(b) a pension committee composed of one or more representatives of,

(i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and

(ii) members of the pension plan;

(c) a pension committee composed of representatives of members of the pension plan;

(d) the insurance company that provides the benefits under the pension plan, if all the benefits under the pension plan are guaranteed by the insurance company;

(e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; or

(f) a board, agency or commission made responsible by an Act of the Legislature for the administration of the pension plan.

Additional members

(2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

Prohibition

(3) No person who is a receiver or a trustee in bankruptcy of an administrator of a pension plan shall administer the pension plan.

Affiliate

1982, c. 4

(4) For the purpose of clauses (1) (a) and (b), if the employer is a body corporate, "employer" includes an affiliate of the employer as defined in subsection 1 (1) of the *Business Corporations Act, 1982*.

Application for registration

9.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is established, for registration of the pension plan.

Requirements for registration

(2) An application for registration shall be made by paying the prescribed fee to the Commission and filing,

(a) a completed application in the prescribed form;

(b) certified copies of the documents that create and support the pension plan;

(c) certified copies of the documents that create and support the pension fund;

(d) a certified copy of any reciprocal transfer agreement related to the pension plan;

(e) a certified copy of the explanations and other information provided under subsection 26 (1); and

(f) any other prescribed documents.

Collective agreement

(3) For the purpose of subsection (2), "document" includes "collective agreement". 1987, c. 35, s. 9.

Contents of pension plan

10.—(1) The documents that create and support a pension plan shall set out the following information:

1. The method of appointment and the details of appointment of the administrator of the pension plan.

2. The conditions for membership in the pension plan.

3. The benefits and rights that are to accrue upon termination of employment, termination of active membership, retirement or death.

4. The normal retirement date under the pension plan.

5. The eligibility requirements under the pension plan for any benefit or right.

6. The contributions or the method of calculating the contributions required by the pension plan.

7. The method of determining benefits and calculating the value of benefits payable under the plan.

8. The method of calculating interest to be credited to contributions under the pension plan.

9. The mechanism for payment of the cost of administration of the pension plan and pension fund.

10. The mechanism for establishing and maintaining the pension fund.

11. The treatment of surplus during the continuation and the wind up of the pension plan in whole or in part.

12. The obligation of the administrator to provide members with information and documents required to be disclosed under this Act and the regulations.

13. The method of allocating the assets of the pension plan during the wind up of the plan in whole or in part.

14. Particulars of any predecessor pension plan under which members of the pension plan may be entitled to pension benefits.

15. Any other prescribed information related to the pension plan or pension fund or both.

Multi-employer pension plan

(2) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan. 1987, c. 35, s. 10.

Gradual and uniform accrual of pension benefits

11.—(1) A pension plan is not eligible for registration unless it provides for the accrual of pension benefits in a gradual and uniform manner.

Variable contributions or pension benefits

(2) A pension plan is not eligible for registration if the formula for computation of the employer's contributions to the pension fund or the pension benefit provided under the pension plan is variable at the discretion of the employer.

Variable deferred profit-sharing

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits is not eligible for registration if the formula governing allocation of contributions to the pension fund and profits among members of the plan is variable at the discretion of the employer.

Exception

(4) Notwithstanding subsections (1), (2) and (3), the Superintendent may register a pension plan if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members. 1987, c. 35, s. 11.

Application for registration of amendment

12.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

Requirements for registration

(2) An application for registration of an amendment shall be made by paying the prescribed fee to the Commission and filing,

(a) a certified copy of the amending document;

(b) certified copies of any other prescribed documents; and

(c) any other prescribed information.

Filing of changes

(3) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund. 1987, c. 35, s. 12.

When amendment becomes effective

13.—(1) An amendment to a pension plan is not effective until an application for registration of the amendment is made in accordance with this Act and the regulations.

Retroactive amendment

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered. 1987, c. 35, s. 13.

14.—(1) An amendment to a pension plan is void if the amendment purports to reduce the amount, the commuted value or the actuarial present value of, Reduction of benefits

(a) a pension benefit that has accrued under the plan before the date described in subsection (1a);

(b) a pension that has accrued under the plan before the date described in subsection (1a); or

(c) an ancillary benefit in respect of which a member has, before the date described in subsection (1a), met all eligibility requirements under the plan.

(1a) For the purpose of subsection (1), the date is, Determination date

(a) the date agreed upon by the Superintendent, the employer, the administrator and the trade union, if any, representing the members or, if there is no such trade union, the members, which date shall be no earlier than the first day of the fiscal year of the pension plan in which the application for registration of the amendment is filed;

(b) if no date is agreed upon as described in clause (a), the later of,

(i) the effective date of the amendment as set out in the application for registration of the amendment, and

(ii) the date on which the administrator files the application for registration of the amendment.

(2) Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement. Application of subs. (1)

(3) Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement. 1987, c. 35, s. 14. Idem

15. The Superintendent shall issue an acknowledgment of application for registration of a pension plan within thirty days after receiving an application for the registration that complies with this Act and the regulations. 1987, c. 35, s. 15. Acknowledgment of application for registration

Issuance of certificate of registration

16.—(1) The Superintendent shall issue a certificate of registration for each pension plan registered under this Act. 1987, c. 35, s. 16.

Registration not an estoppel

(2) Registration of a pension plan does not operate as an estoppel against the Superintendent.

Waiver, etc., to be void

16a.—(1) No person shall contract out of or waive a requirement imposed under this Act upon an employer or administrator of a pension plan in favour of a member, claimant or former member and any such contracting out or waiver is void.

Act deemed amended

(2) Notwithstanding any provision in the pension plan, a plan that has been registered shall be deemed to be amended so that it complies with this Act and the regulations.

Issuance of notice of registration

17. The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act. 1987, c. 35, s. 17.

Refusal or revocation of registration

18.—(1) The Superintendent may,

(a) refuse to register a pension plan that does not comply with this Act and the regulations;

(b) revoke the registration of a pension plan that does not comply with this Act and the regulations;

(c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;

(d) refuse to register an amendment to a pension plan if the amendment is void under this Act or if the pension plan with the amendment would cease to comply with this Act and the regulations;

(e) revoke the registration of an amendment that does not comply with this Act and the regulations.

(2) REPEALED.

Effect of refusal or revocation

(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan shall be deemed to be a termination of the pension plan as of the date specified by the Superintendent.

Idem

(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan

shall be deemed to be a termination of the amendment as of the date specified by the Superintendent.

Wind up

(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations. 1987, c. 35, s. 18.

Conforming amendment

19.—(1) Every employer who maintains a pension plan on the date this Act comes into force shall amend the pension plan to conform with this Act and the regulations within two years after the date this Act comes into force.

Exception

R.S.O. 1980, c. 228

(2) If a pension plan is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is in effect on the date this section comes into force, the parties to the collective agreement or arbitration award shall amend the pension plan to conform to this Act and the regulations not later than the earlier of,

(a) the date that is three years after the date on which this section comes into force; or

(b) the date that is two years after the date on which this section comes into force, where the collective agreement or arbitration award expires within the two-year period.

Registration

(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is the subject of an application for registration submitted after this Act comes into force, if the collective agreement was entered into or the arbitration award was made before this Act comes into force and the pension plan would have been eligible for registration under the *Pension Benefits Act*.

R.S.O. 1980, c. 373

Application of subs. (2)

(4) Subsection (2) applies to a pension plan referred to in subsection (3). 1987, c. 35, s. 19.

Duty of administrator

20.—(1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

Application of subs. (1)

(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.

Idem

(3) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,

(a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and

(b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

Application of subs. (3)

(4) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations.

Idem, amendment

(5) The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment. 1987, c. 35, s. 20.

Superintendent may appoint administrator

20a.—(1) If the administrator of a pension plan fails to comply with an order of the Superintendent or the Commission, the Superintendent may act as or may appoint an administrator or trustee.

Costs of administration

(2) The reasonable administration costs of the Superintendent or of the administrator appointed by the Superintendent may be paid out of the pension fund.

Administrator's annual information return

21.—(1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the prescribed form and shall pay the prescribed filing fee.

Additional reports

(2) The administrator of a pension plan shall file additional reports at the times and containing the information prescribed by the regulations. 1987, c. 35, s. 21.

Reciprocal transfer agreement

22. An administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan. 1987, c. 35, s. 22.

Care, diligence and skill

23.—(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and invest-

ment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special knowledge and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of his or her profession, business or calling, ought to possess.

Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Conflict of interest

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit his or her interest to conflict with his or her duties and powers in respect of the pension fund.

Employment of agent

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Actuaries deemed agents

(5a) Every actuary who provides actuarial services with respect to the establishment or administration of a pension plan shall be deemed to be an agent of the administrator of the plan.

Trustee of pension fund

(6) No person other than a prescribed person shall be a trustee of a pension fund.

Responsibility for agent

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Employee or agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Payment to administrator

(9) The administrator of a pension plan is not entitled to any payment from or under the plan other than,

(a) benefits, and a refund of contributions, under the plan to which the administrator is entitled as a

member, former member or claimant of the plan; and

(b) fees and expenses related to the administration of the plan and permitted by the common law or provided for in the plan.

Member of pension committee, etc.

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Payment to agent

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan. 1987, c. 35, s. 23.

Information from employer

24.—(1) An employer whose employees or former employees are members of a pension plan shall provide to the administrator of the pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations.

Interpretation

(2) In subsection (1), "employer" includes a predecessor of the employer.

Advisory committee

25.—(1) The members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee.

Representation

(2) Each class of employees that is represented in the pension plan is entitled to appoint at least one representative to the advisory committee established under subsection (1).

Idem, inactive members

(3) The inactive members of the pension plan are entitled to appoint one representative to the advisory committee established under subsection (1).

Purposes

(4) The purposes of an advisory committee are,

(a) to monitor the administration of the pension plan;

(b) to make recommendations to the administrator respecting the administration of the pension plan; and

(c) to promote awareness and understanding of the pension plan on the part of members of the pension

plan and persons receiving benefits under the pension plan.

Examination of records

(5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, benefits or other personal information related to any specific person without the person's prior consent.

Application of subs. (1)

(6) Subsection (1) does not apply,

(a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; or

(b) in respect of a multi-employer pension plan established pursuant to a collective agreement.

Administrator to provide information

(7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee. 1987, c. 35, s. 25.

DISCLOSURE OF INFORMATION

Information from administrator

26.—(1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member of the pension plan,

(a) an explanation of the provisions of the plan that apply to the person;

(b) an explanation of the person's rights and obligations in respect of the pension plan; and

(c) any other information prescribed by the regulations.

Time

(2) The administrator shall provide the information mentioned in subsection (1),

(a) to each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;

(b) to a person who is likely to become eligible to become a member of the pension plan, within the

prescribed period of time before the date on which the person is likely to become eligible;

(c) to each person who becomes eligible to become a member of the pension plan upon becoming employed by the employer, within the prescribed period of time after the date on which the person becomes so employed.

Information from employer

(3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection. 1987, c. 35, s. 26.

Notice of proposed amendment

27.—(1) If the administrator of a pension plan applies for registration of an amendment to the pension plan that would result in a reduction of benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member, claimant or former member, the Superintendent shall require the administrator to transmit to such persons as the Superintendent may specify a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Superintendent, and the administrator shall provide to the Superintendent a copy of the notice and shall certify to the Superintendent the date on which the last such notice was transmitted.

Registration

(2) If the Superintendent has required the administrator to transmit notices under subsection (1), the Superintendent shall not register an amendment mentioned in that subsection before the expiration of forty-five days after the date certified to the Superintendent under that subsection, but after the expiration of the forty-five day period the Superintendent may register the amendment with such changes as are requested in writing by the administrator.

Notice after registration

(3) Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, claimant and former member who is affected by the amendment.

Order dispensing with notice

(4) The Superintendent need not require the transmittal of notices under subsection (1) or may dispense with the notice required by subsection (3), or both,

(a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not sub-

stantially affect the benefits, rights or obligations of a member, claimant or former member;

(b) if the amendment has been agreed to by a trade union that represents the members; or

(c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Notice to trade union

(5) The administrator shall transmit the notice mentioned in subsection (1) to a trade union representing members affected by the proposed amendment if the union is a party to a collective agreement that creates or supports the pension plan.

Annual statement of benefits

28. The administrator of a pension plan shall transmit annually to each active member a written statement containing the prescribed information in respect of the pension plan and the member's benefits.

Statement of benefits

29.—(1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.

Multi-employer pension plan

(2) Subsection (1) applies in respect of a multi-employer pension plan where a member ceases to be a member, but does not apply where a member terminates employment with an employer but continues to be a member. 1987, c. 35, s. 29.

Inspection of administrator's documents

30.—(1) On written request, the administrator of a pension plan shall make available the prescribed documents and information in respect of the pension plan and the pension fund for inspection without charge to,

(a) a member;

(b) a former member;

(c) a spouse or former spouse of a member or former member;

(d) a claimant;

(e) an agent authorized in writing by a person mentioned in clause (a), (b), (c) or (d);

(f) a representative of a trade union that represents members of the pension plan;

(g) an employer who is or was required to make contributions to the pension plan;

(h) a participating employer;

(i) a receiver or trustee in bankruptcy of an employer referred to in clause (g) or (h); and

(j) such other persons as may be prescribed.

Place of inspection

(2) The administrator shall make the prescribed documents and information available,

(a) to a member, at the premises of the employer where the member is or was employed; and

(b) to any other person, at a location agreed upon by the person and the administrator or, if no agreement is reached, at a location specified by the Superintendent.

Extracts or copies

(3) The administrator shall permit the person making the inspection to make extracts from or to copy the prescribed documents and information.

Idem

(4) On request, the administrator shall provide the person making the inspection with copies of any of the prescribed documents or information upon payment to the administrator of a reasonable fee.

Limitation

(5) The administrator is not required to make available for inspection the prescribed documents and information more than once in a year to a person described in clauses (1) (a) to (e).

Inspection of filed documents

31. The administrator of a pension plan and the persons described in clauses 30 (1) (a) to (j) are entitled to inspect at the offices of the Commission during business hours of the Commission the documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund, and are entitled to copies of the documents upon payment of the prescribed fees.

MEMBERSHIP

Eligibility for membership

32.—(1) Every employee of a class of employees for whom a pension plan is established is eligible to be a member of the pension plan.

Full-time employment

(2) An employee in a class of employees for whom a pension plan is maintained is entitled to become a member of the pension plan upon application at any time after completing twenty-four months of continuous full-time employment.

Part-time employment

(3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer, with the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings; or

(b) 700 hours of employment with the employer,

in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan.

Multi-employer pension plan

(4) A multi-employer pension plan may require not more than the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings with one or more of the participating employers; or

(b) 700 hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan.

Approval

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. 1987, c. 35, s. 32.

Loss of membership

33. A member of a pension plan who is employed continuously on a less than full-time basis does not cease to be a member by reason only that he or she has earnings of less than 35 per cent of the Year's Maximum Pensionable Earn-

ings in a calendar year or is employed for fewer than 700 hours in a calendar year. 1987, c. 35, s. 33.

Dispute as to member of class of employees

34.—(1) Where there is a dispute as to whether or not an employee is a member of a class of employees for whom a pension plan is established or maintained, the Superintendent by order may require the administrator to accept the employee as a member of the class.

Ground for order

(2) The Superintendent may make the order if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the class. 1987, c. 35, s. 34.

Separate pension plan

35.—(1) With the approval of the Superintendent, an employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment.

Approval by Superintendent

(2) The Superintendent shall approve a separate pension plan referred to in subsection (1) if the Superintendent considers that the separate pension plan is reasonably equivalent to the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment.

Membership

(3) Notwithstanding subsection 32 (1), if an employer establishes a separate pension plan for employees employed in less than full-time continuous employment, the employees are not entitled to be members of the employer's pension plan for employees of the same class employed in full-time continuous employment.

RETIREMENT AND VESTING

Normal retirement date

36.—(1) The normal retirement date under a pension plan submitted for registration after the date this Act comes into force shall not be later than one year after the attainment of sixty-five years of age.

Transitional

(2) Every pension plan registered or submitted for registration before the date on which this Act comes into force shall be deemed to specify a normal retirement date in respect of benefits that accrue after that date that is not later than one year after attainment of sixty-five years of age, unless the pension plan specifies an earlier retirement date.

(3), (4) REPEALED.

37.—(1) An active member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3). Deferred pension for past service

(2) The qualifications are that, on the date the member terminates his or her employment with the employer, Qualifications

(a) that the member must have been employed by the employer, or have been a member of the pension plan, for a continuous period of at least ten years;

(b) that the member must have reached the age of forty-five years; and

(c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

(3) The benefit is the pension benefit provided under the pension plan as it existed on the 31st day of December, 1986 in respect of employment before the 1st day of January, 1987 in Ontario or in a designated jurisdiction, Amount

(a) under the terms of the pension plan, with respect to employment on or after the qualification date;

(b) by an amendment to the pension plan made on or after the qualification date; and

(c) by the creation of a new pension plan on or after the qualification date.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions. 1987, c. 35, s. 37. Application of subss. (1-3)

38.—(1) An active member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3). Deferred pension

(2) The qualifications are, Qualifications

(a) that the member must be a member on or after the 1st day of January, 1988;

(b) that, on the date the member terminates his or her employment with the employer, the member must have been a member for a continuous period of at least twenty-four months; and

(c) that, on the date of termination, the member must not have attained the normal retirement date under the pension plan.

Active membership

(2a) For the purpose of clauses (2) (a) and (b), a period of active membership of a member in a pension plan includes a period that, but for this subsection, would be a period of active membership of the member in another pension plan for the employees of the member's employer.

Amount

(3) The benefit is the pension benefit provided in respect of employment in Ontario or in a designated jurisdiction,

(a) under the pension plan in respect of employment with the employer after the later of the 31st day of December, 1986 or the qualification date if the qualification date is later than the 31st day of December, 1986;

(b) under any amendment made to the pension plan after the 31st day of December, 1986; and

(c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

Application of subs. (1-3)

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions. 1987, c. 35, s. 38.

Vesting of pension benefits

38a. An active member of a pension plan who terminates employment in the pension plan on or after attaining the age that is the normal retirement date is entitled to,

(a) the benefit described in subsection 37 (3), if the member meets the requirements set out in clauses 37 (2) (a) and (b); and

(b) the benefit described in subsection 38 (3).

Payment of pension

38b.—(1) The first instalment of a member's pension shall be due not later than the first day of the month following the normal retirement date, unless the member otherwise elects.

Continuation after normal retirement date

(2) An active member who continues employment in the pension plan after attaining the age that is the normal retirement date may elect to continue accruing benefits under the pension plan.

(3) The accrual of benefits by a member who makes the election described in subsection (2) is subject to a term of the pension plan, Limitation

(a) limiting the number of years of employment or active membership that can be considered for the purpose of determining a member's pension benefit; or

(b) fixing a maximum amount of a member's pension benefit.

(4) The first instalment of a pension of a member who makes the election described in subsection (2) shall be due not later than the earlier of, Payment of pension

(a) the date of revocation of the election by the member; and

(b) the first day of the month following the date of termination of employment of the member.

39.—(1) A person who is, Termination by member

(a) an active member of a multi-employer pension plan;

(b) an active member of a pension plan who is employed by the employer on a less than full-time basis; or

(c) an active member of a pension plan who has been laid off from employment by the employer,

is entitled to terminate his or her active membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period of time as is specified in the pension plan.

(2) For the purpose of this Act, a person mentioned in subsection (1) who terminates his or her active membership in a pension plan shall be deemed to have terminated his or her employment. Effect of termination

(3) Subsections (1) and (2) do not apply if contributions are not paid or are not required to be paid because the person, Application of subs. (1, 2)

(a) has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans; or

(b) has become a member of another pension plan for employees of the member's employer.

Termination of employment

(4) For the purpose of this Act, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan shall be deemed not to have terminated employment until the earliest of,

(a) the date of death of the member;

(b) the date of retirement of the member from the pension plan; and

(c) the date the member terminates active membership in the plan.

Certification of new bargaining agent R.S.O. 1980, c. 228

(5) Where a member of a multi-employer pension plan is represented by a trade union, which, in accordance with section 56 of the *Labour Relations Act*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate active membership in the first plan.

Application of subs. (5)

(6) Subsection (5) does not apply where there is a reciprocal transfer agreement respecting the two pension plans. 1987, c. 35, s. 39.

BENEFITS

Value of deferred benefit

40.—(1) If the commuted value or the actuarial present value of the contributory benefit that accrued under a pension plan before the 1st day of January, 1987 and to which a member is entitled on the date of termination of employment is less, on the date of termination, than the sum of the member's contributions made under the plan before the 1st day of January, 1987 and the interest thereon to the date of termination, the benefit shall be increased on the date of termination so that the commuted value or the actuarial present value of the benefit is at least equal to that sum.

Application

(1a) Subsection (1) does not apply in respect of a pension plan that contains the provision described in subsection (2a).

Effect of amendment

(2) An increase in the commuted value or the actuarial present value of a contributory benefit under a pension plan in respect of employment before the 1st day of January, 1987,

(a) that results from an amendment to the pension plan made on or after that date; and

(b) to which the member is entitled on the date of termination of employment,

may be included in calculating the commuted value or the actuarial present value of the benefit for the purposes of subsection (1).

Term re: 50 per cent rule

(2a) A pension plan may provide, in respect of each member of the pension plan that,

(a) the sum of the member's contributions under the pension plan made before the 1st day of January, 1987 and the interest thereon to the date of termination of employment of the member shall not be used to provide more than 50 per cent of the commuted value or the actuarial present value, on the date of termination, of the contributory benefit under the plan that accrued before the 1st day of January, 1987 and to which the member is entitled on the date of termination; and

(b) if the member is entitled to a contributory benefit under the pension plan on termination of employment, the member is entitled to payment on termination of a lump sum equal to the amount by which the sum of the member's contributions made before the 1st day of January, 1987 and interest thereon to the date of termination exceeds one-half of the commuted value or the actuarial present value, on the date of termination, of the member's contributory benefit accrued before the 1st day of January, 1987.

50 per cent rule

(3) The sum of the contributions under a pension plan made by a member of the plan after the 31st day of December, 1986 and the interest thereon to the date of termination of employment shall not be used to provide more than 50 per cent of the commuted value or the actuarial present value, on the date of termination, of the contributory benefit under the plan that accrued after the 31st day of December, 1986 and to which the member is entitled on the date of termination.

Entitlement to excess amount

(4) If an active member of a pension plan is entitled to a contributory benefit under the plan on termination of employment, the member is entitled to payment on termination of a lump sum equal to the amount by which the sum of the member's contributions made after the 31st day of December, 1986 and interest thereon to the date of termination exceeds one-half of the commuted value or the actuarial present value, on the date of termination, of the contributory benefit that

accrued after the 31st day of December, 1986 and to which the member is entitled on the date of termination.

Exclusions

(5) The following may be excluded in determining that part of the commuted value of a pension or the actuarial present value of a benefit to which subsections (3) and (4) apply:

1. Defined contribution benefits.

2. Benefits that result from additional voluntary contributions.

3. In the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions.

4. Any other benefits prescribed for the purposes of this subsection.

Matters that may be included

(6) The following may be included in calculating a member's contributory benefit for the purposes of subsection (3):

1. Ancillary benefits related to employment on or after the 1st day of January, 1987.

2. Increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the 1st day of January, 1987 but that are not included in calculating commuted value under subsection (2).

3. Pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the 1st day of January, 1987. 1987, c. 35, s. 40.

Conversion of benefit

(7) Where a defined benefit accrued by a member of a pension plan is at any time converted in whole or in part into a defined contribution benefit, the provisions of subsections (1) to (6) and 41 (2) apply as if the member terminated employment at that time.

Ancillary benefits

41.—(1) A pension plan may provide the following ancillary benefits:

1. Disability benefits.

2. Death benefits in excess of those provided in section 49 (pre-retirement death benefit).

3. Bridging benefits.

4. Supplemental benefits, other than bridging benefits, payable for a temporary period of time.

5. Early retirement options and benefits in excess of those provided by section 42 (early retirement option).

6. Postponed retirement options and benefits in excess of those referred to in subsection 36 (4).

7. Any prescribed ancillary benefit.

Use in calculating pension benefit

(2) The pension benefit to which a member is, on the date of termination of employment of the member, entitled shall include an ancillary benefit for which the member has met, on that date, all eligibility requirements under the pension plan.

(3) REPEALED.

Early retirement option

42.—(1) An inactive member of a pension plan is entitled to elect at any time to receive an early retirement pension under the pension plan if the member,

(a) terminates employment on or after the 1st day of January, 1988;

(b) is entitled, at the time of election, to a deferred benefit under the pension plan; and

(c) is, at the time of election, within ten years of attaining the normal retirement date.

Idem

(2) An active member who is within ten years of attaining the normal retirement date and who would be entitled to a deferred benefit on termination of employment with the employer is entitled upon termination of the employment or on the wind up of the pension plan in whole or in part to elect to receive an early retirement pension under the pension plan.

Actuarial present value

(3) The actuarial present value of an inactive member's early retirement pension under subsection (1) must be not less than the actuarial present value of the inactive member's deferred benefit under the pension plan.

Idem

(4) The actuarial present value of a member's early retirement pension under subsection (2) must be not less than the actuarial present value of the deferred benefit under the pension plan to which the member would be entitled on termination of employment.

Payment

(5) The member mentioned in subsection (1) or (2) is entitled to require the commencement of payment of the early retirement pension at any time after making the election and within the ten-year period mentioned in subsection (1) or (2).

Election

(6) An election under subsection (1) or (2) shall be made in writing, signed by the member and delivered to the administrator of the pension plan. 1987, c. 35, s. 42.

Transfer

43.—(1) A member of a pension plan who, on or after the 1st day of January, 1988, terminates employment and who is entitled to a deferred benefit is entitled to require the administrator to pay an amount equal to the commuted value of the deferred benefit,

(a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;

(b) into a prescribed retirement savings arrangement; or

(c) for the purchase for the member of a life annuity that will not commence before the earliest date on which the member would have been entitled to receive payment of pension benefits under the pension plan.

Limitation

(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

Application of subs. (1)

(3) Subsection (1) does not apply to a member whose employment is terminated and who is entitled to immediate payment of a pension under the pension plan or under section 42, unless the pension plan provides such an entitlement.

Idem

(3a) Subsection (1) does not apply with respect to any defined contribution benefit in respect of which the member has elected to purchase a deferred life annuity from an insurance company if,

(a) the pension plan permits the election;

(b) the election is made after the 31st day of December, 1987;

(c) the member makes the election in a form supplied by the Superintendent; and

(d) the member is within fifteen years of attaining the normal retirement date when the member makes the election.

Direction

(4) A member may exercise his or her entitlement under subsection (1) by delivering to the administrator within the prescribed period of time a direction in a form supplied by the Superintendent.

Compliance with direction

(5) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

Terms of arrangement or deferred annuity

(6) The administrator shall not make payment,

(a) under clause (1) (b) unless the retirement savings arrangement meets the requirements prescribed by the regulations; or

(b) under clause (1) (c) unless the contract to purchase the deferred life annuity meets the prescribed requirements.

Approval

(7) If a payment under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent.

Terms and conditions

(8) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Order for repayment

(9) If a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent by order, may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

(10) REPEALED.

Discharge of administrator

(11) The administrator is discharged on making the payment or transfer in accordance with the direction of the member if the payment or transfer complies with this Act and the regulations. 1987, c. 35, s. 43.

Exception

(12) This section does not apply in respect of benefits under a pension plan accrued on or before a prescribed date where such benefits are guaranteed by an insurance company and the guarantee was given by the insurance company on or before that date.

Purchase of pension

44.—(1) The administrator of a pension plan who is required by the pension plan to provide a pension or benefit may purchase the pension or benefit from an insurance company.

Limitations

(2) The authority of the administrator under subsection (1) is subject to the entitlement of a member under section 43 and to the limitations prescribed in relation to transfers of funds from pension funds.

Approval by Superintendent

(3) If a purchase under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the Superintendent.

Idem

(4) The Superintendent may approve a purchase mentioned in subsection (3) subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Order for repayment

(5) If a purchase that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is a failure to comply with a term or condition attached to the approval, the Superintendent by order may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

(6) REPEALED.

Joint and survivor pension

45.—(1) Every pension paid under a pension plan to a member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.

Actuarial present value

(2) The actuarial present value of a joint and survivor pension under subsection (1) shall be not less than the actuarial present value of the pension that, but for subsection (1),

would be payable under the pension plan in respect of the member.

Amount of survivor benefit

(3) The amount of the pension payable to the survivor of the member and the spouse of the member shall be not less than 60 per cent of the amount of the pension paid to the member during the joint lives of the member and his or her spouse.

Application of subss. (1-3)

(4) Subsections (1) to (3) do not apply,

(a) in respect of a benefit if payment of the pension in respect of the benefit has commenced before the 1st day of January, 1988;

(b) in respect of the spouse of a member who is living separate and apart from the member on the date that payment of the first instalment of the pension is due; and

(c) in respect of the portion of a pension that relates to a prescribed ancillary benefit.

Deferred life annuity

(5) Where,

(a) before the 1st day of January, 1988, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under the *Pension Benefits Act*; R.S.O. 1980, c. 373

(b) payments have not commenced under the annuity before the 1st day of January, 1988; and

(c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section and the insurance company shall make payments accordingly.

Application of ss. 46, 47

(6) For the purposes of subsection (5), the insurance company shall be deemed to be the administrator under sections 46 and 47. 1987, c. 35, s. 45.

Information for payment

46.—(1) Before commencing payment of a pension or benefit, or paying the commuted value of the pension or benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and make the payment.

Person to provide information

(2) The person entitled to the payment shall provide the information to the administrator.

Discharge of administrator

(3) In the absence of actual notice to the contrary, the administrator is discharged on making the payment in accordance with the information provided by the person in accordance with subsection (2) or, if the person does not provide the information, in accordance with the latest information in the records of the administrator. 1987, c. 35, s. 46.

Waiver of joint and survivor pension

47.—(1) The persons entitled to a joint and survivor pension may waive the entitlement to receive payment of the pension in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company a joint written waiver in the prescribed form or a certified copy of a domestic contract, as defined in Part IV of the *Family Law Act, 1986*, containing the waiver.

1986, c. 4

Time

(2) The waiver is not effective unless the written waiver or certified copy is delivered to the administrator within the period of twelve months immediately preceding the commencement of payment of the pension.

Cancellation of waiver

(3) Persons who have delivered a waiver under subsection (1) may jointly cancel the waiver by written and signed notice delivered to the administrator before commencement of payment of the pension. 1987, c. 35, s. 47.

Remarriage of spouse

48.—(1) The spouse of a deceased member of a pension plan who is receiving a pension under the pension plan is not disentitled to payment of the pension by reason only of remarriage after the death of the member.

Application of subs. (1)

(2) Subsection (1) applies in respect of pensions that are being paid on the 1st day of January, 1987 or that commence to be paid after the 31st day of December, 1986. 1987, c. 35, s. 48.

Pre-retirement death benefits

49.—(1) If a member of a pension plan who is entitled under the pension plan to the benefit described in subsection 38 (3) dies before payment of the first instalment of the pension in respect of the benefit is due, the member's spouse is entitled,

(a) to receive within the prescribed period of time a lump sum payment which is at least equal to the sum of,

(i) the commuted value of the benefit described in subsection 38 (3), and

(ii) the payment, if any, to which the member is entitled under subsection 40 (4);

(b) to a deferred benefit the actuarial present value of which is at least equal to the sum of,

(i) the actuarial present value of the benefit described in subsection 38 (3), and

(ii) the payment, if any, to which the member is entitled under subsection 40 (4); or

(c) to an immediate benefit the actuarial present value of which is at least equal to the sum of,

(i) the actuarial present value of the benefit described in subsection 38 (3), and

(ii) the payment, if any, to which the member is entitled under subsection 40 (4).

Payment of pension

(2) The pension in respect of the deferred benefit described in clause (1) (b) shall commence to be paid to the spouse,

(a) no earlier than ten years before the spouse attains the normal retirement date under the plan; and

(b) no later than the normal retirement date under the plan.

Return of contributions

(3) Subject to subsection (5), if a member of a pension plan dies before becoming entitled to the benefit described in subsection 38 (3), the member's spouse is entitled to receive within the prescribed period of time payment of a lump sum which is at least equal to the sum of the member's contributions made after the 31st day of December, 1986 together with interest thereon calculated in the prescribed manner.

Idem, pre-1987 pension

(4) Subject to subsection (5), if a member of a pension plan who made contributions under the plan before the 1st day of January, 1987 dies before commencing to receive a pension in respect of the benefit described in subsection 37 (3), whether or not the member is entitled to that benefit, the beneficiary designated by the member is entitled to receive within the prescribed period of time payment of a lump sum which is at least equal to the sum of the member's contributions made

before the 1st day of January, 1987 together with interest thereon calculated in the prescribed manner.

Deduction re: survivors

(5) If, in respect of a member referred to in subsection (3) or (4), the pension plan provides for payment of benefits to survivors of the member, the commuted value of any such benefits may be deducted from the lump sum payable under subsection (3) or (4).

Application of subss. (1, 3)

(6) Subsections (1) and (3) do not apply where the member and his or her spouse are living separate and apart on the date of the death of the member.

Election

(7) A spouse who has an entitlement under subsection (1) shall elect within the prescribed period of time to receive payment under clause (1) (a), (b) or (c) and a spouse who does not make an election shall be deemed to have elected to receive a deferred benefit under clause (1) (b).

Designated beneficiary

(8) A member of a pension plan may designate a beneficiary and the beneficiary is entitled to be paid the lump sum mentioned in clause (1) (a) or subsection (3) if the member,

(a) does not have a spouse on the date of death; or

(b) is living separate and apart from his or her spouse on that date.

Estate entitlement

(9) The personal representaive of the member referred to in subsection (4) or (8) who has not designated a beneficiary is entitled to receive as the property of the member payment of the lump sum to which such a beneficiary would have been entitled thereunder.

Dependent children

(10) If the pension plan provides for payment of benefits to dependent children of the member upon the member's death, the commuted value of the children's benefits may be deducted from the entitlement of a beneficiary or a personal representative.

Information

(11) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment.

Discharge of administrator

(12) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person or, if no such information is provided, in accordance with the most recent information in the administrator's records.

Offset

(13) A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer subject to the following:

1. The reduction shall be calculated in the prescribed manner.

2. The reduction shall not exceed the prescribed limits.

Discharge of entitlement

(14) Payment in accordance with this section replaces the member's entitlement to a benefit under sections 37, 38 and 38a.

Order or domestic contract

(15) An entitlement under this section is subject to any right to or interest in benefits and rights set out in a domestic contract or an order referred to in section 52.

Waiver

(16) A member and his or her spouse may waive the spouse's entitlement under subsection (1) or (3) in the prescribed form and, for the purpose, subsections (8) and (9) apply as if the member does not have a spouse on the date of the member's death.

Definition

(17) In this section, "personal representative" has the same meaning as in the *Estates Administration Act*. R.S.O. 1980, c. 143

Variation of payment to disabled person

50.—(1) A pension plan may permit variation in the terms of payment of a pension or benefit by reason of the mental or physical disability of a member that is likely to shorten considerably the life expectancy of the member. 1987, c. 35, s. 50.

Idem

(2) If a pension plan that has been terminated or wound up does not provide for the variation described in subsection (1), the pension plan shall be deemed to permit the variation, and the Superintendent may approve the variation for a person in the circumstances described in subsection (1).

Commuted value

51.—(1) A pension plan may require payment to an inactive member of the commuted value of a benefit if the annual benefit payable at the normal retirement date is not more than the prescribed percentage of the Year's Maximum Pensionable Earnings for the year in which the member terminates employment.

Idem

(1a) For the purpose of subsection (1), the annual benefit payable in respect of a defined contribution benefit shall be determined in the prescribed manner.

Terminated pension plan

(1b) A pension plan that has been terminated shall be deemed to contain the requirement described in subsection (1).

Idem

(2) A pension plan registered before the 1st day of January, 1988 may provide that upon termination of employment a person entitled to a deferred benefit under section 37 (deferred pension) is entitled to payment of an amount not greater than 25 per cent of the commuted value of the deferred benefit. 1987, c. 35, s. 51.

Payment on marriage breakdown 1986, c. 4

52.—(1) A member of a pension plan may convey by a domestic contract as defined in Part IV of the *Family Law Act, 1986* to a spouse or former spouse all or part of the member's present and future interest in benefits and rights under the pension plan.

Idem

(2) An order made under Part I or III of the *Family Law Act, 1986* may convey to a spouse or former spouse of a member of a pension plan all or part of the member's present and future interest in benefits and rights under the plan.

Spouse deemed to be a member

(3) A person to whom a conveyance described in subsection (1) or (2) is made shall be deemed to be a member of the pension plan.

Discharge of administrator

(4) If a conveyance described in subsection (1) or (2) is made, the administrator of the pension plan is discharged on taking the action required by the domestic contract or order.

Coming into force

(5) This section shall be deemed to have come into force on the first day of January, 1987.

Termination of spouse's membership

52a.—(1) A person to whom a conveyance described in section 52 is made may elect in a form provided by the Superintendent to terminate the person's membership in the pension plan.

Application of s. 43

(2) Section 43 applies with respect to a person who makes an election under subsection (1) as if the person were a member who terminates employment on the date the election is made.

Administrator may require termination

(3) If the pension plan so provides, the administrator may require the person referred to in subsection (1),

(a) to make the election described in subsection (1) and the person shall so elect; and

(b) to require the payment described in subsection 43 (1) to be made and the person shall so require.

Idem

(4) If a person required under subsection (3) by the administrator to make an election and to require payment does not do so within the prescribed period of time,

(a) the person shall be deemed to have made the election under subsection (1);

(b) the person shall be deemed to have required the payment described in clause 43 (1) (b); and

(c) the administrator shall be deemed to be the agent of the person for the purpose of establishing the person's prescribed retirement savings arrangement.

Discrimination on basis of sex

53.—(1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in,

(a) determining the amount of contributions required to be made by a member of the plan;

(b) determining the benefits or the actuarial present value or commuted value of benefits;

(c) the provision of eligibility conditions for membership; and

(d) the provision of ancillary benefits.

Administration

(2) In order to comply with subsection (1), the administrator may,

(a) use annuity factors that do not differentiate as to sex;

(b) provide for employer contributions that vary according to the sex of the employee; or

(c) use any prescribed method of calculation or valuation.

Application

(3) This section applies in respect of contributions, benefits and conditions in relation to,

(a) employment after the 31st day of December, 1986;

(b) employment before the 1st day of January, 1987, in so far as it is dealt with in an amendment made to the pension plan after the 31st day of December, 1986; and

(c) employment before the 1st day of January, 1987, in so far as it is dealt with in a pension plan established after the 31st day of December, 1986. 1987, c. 35, s. 53.

54. REPEALED.

C.P.P./ Q.P.P. offsets
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9
R.S.C. 1985, c. O-9

55.—(1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) shall not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

Idem

(2) The amount of the reduction of a member's pension benefit required under the pension plan in relation to payments mentioned in subsection (1) shall not be increased by reason of an increase in the payments after the date on which the member's employment is terminated.

Reduction re *Old Age Security Act* (Canada)

(3) A pension plan for registration of which application is made on or after the date on which this Act comes into force shall not permit the reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada).

Application of subs. (3)
R.S.O. 1980, c. 373

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered under the *Pension Benefits Act* that permitted such a reduction.

Idem
R.S.C. 1970, c. O-6

(5) A pension plan shall not permit reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the 1st day of January, 1987.

Bridging benefit
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9

(6) Where a pension plan provides for the reduction of a member's bridging benefit by reason that the member receives or is eligible to receive retirement benefits before attaining sixty-five years of age under the *Canada Pension Plan* or the *Quebec Pension Plan*, the reduction may only be made in the prescribed circumstances.

Variations based on other benefits
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9
R.S.C. 1985, c. O-9

(7) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old*

Age Security Act (Canada), the variation shall be applied in the prescribed manner. 1987, c. 35, s. 55.

ADJUSTMENTS FOR INFLATION

55a.—(1) In sections 55a to 55-1, Definitions

"adjustment factor" of a member of a pension plan means, in relation to a year, the total of one and the rate of indexation of the member for the year;

"annual Consumer Price Index", in relation to a particular year, means,

(a) the amount obtained when the aggregate of all amounts each of which is the monthly Consumer Price Index for a month in the year ending at the end of the fourth month preceding the particular year is divided by twelve; and

(b) such other measure related to the monthly Consumer Price Index as meets prescribed conditions;

"basic benefit" means a benefit that gives rise to a basic pension;

"basic pension" means, in relation to a member of a pension plan, a pension that is payable for the lifetime of the member and that is in respect of a defined benefit;

"deflation factor" means, in relation to a year, the amount given by the following formula, if positive, and nil otherwise:

$$\frac{(B - A)}{B}$$

in which "A" is the annual Consumer Price Index for the year and "B" is the annual Consumer Price Index for the immediately preceding year and the calculation is made to the prescribed degree of accuracy;

"inflation carry-forward" of a member of a pension plan, at the end of a year, means the amount given by the following formula, if positive, and nil otherwise:

$$[(A + B) - C - D]$$

in which,

(a) for the purposes of sections 55f (inflation adjustments, pensions) and 55g (inflation adjustments, deferreds),

"A" is the inflation carry-forward of the member at the end of the immediatcly preceding year, if defined for that time, and nil otherwise:

"B" is the inflation factor of the member for the year less 0.08, if the result is positive, and nil otherwise,

"C" is the deflation factor for the year, and

"D" is the lesser of,

(i) 0.08 less the inflation factor of the member for the year, if the result is positive, and nil otherwise, and

(ii) the amount given by the following formula, if positive, and nil otherwise:

$$(A - C)$$

in which "A" and "C" are defined as above; and

(b) for the purposes of sections 55i (retrospective scheme, pensions), 55j (retrospective scheme, deferreds), 55k (retrospective adjustments, pensions-in-pay) and 55-l (retrospective adjustments, deferred pensions),

"A" is the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

"B" is the inflation factor of the member for the year less,

(i) 0.06 for a year that begins on or before the 31st day of December, 2005, or

(ii) 0.08 for a year that begins on or after the 1st day of January, 2006,

if the result is positive, and nil otherwise,

"C" is the deflation factor for the year, and

"D" is the lesser of,

(i) 0.06 for a year that begins on or before the 31st day of December, 2005 or 0.08 for a year that begins on or after the 1st day of January, 2006, less the inflation factor of the member for the year, if the result is positive, and nil otherwise, and

(ii) the amount given by the following formula, if positive, and nil otherwise:

$$(A - C)$$

in which A and C are defined as above;

"inflation factor" of a member of a pension plan, in relation to a year, means the amount given by the following formula, if positive, and nil otherwise:

$$\frac{(A - B)}{B}$$

in which,

"A" is the annual Consumer Price Index for the year, and

"B" is,

(a) for the purpose of sections 55f (inflation adjustments, pensions), 55i (retrospective scheme, pensions) and 55k (retrospective adjustments, pensions-in-pay), the greatest of the annual Consumer Price Indexes for all preceding years that are subsequent to the year immediately preceding the year in which the pension of the member commences to be paid; and

(b) for the purpose of sections 55g (inflation adjustments, deferreds), 55j (retrospective scheme, deferreds) and 55-l (retrospective adjustments, deferred pensions), the greatest of the annual Consumer Price Indexes for all preceding years that are subsequent to the year immediately preceding the year in which the pension commences to be paid, and

the calculation is made to the prescribed degree of accuracy;

"monthly Consumer Price Index", in relation to a month, means the Consumer Price Index for the month as published by Statistics Canada under the authority of the *Statistics Act* (Canada) but, for the purpose of this definition, if the Consumer Price Index for the month as so published is recalibrated the monthly Consumer Price Index shall be determined in accordance with prescribed rules without taking into account such recalibration;

R.S.C. 1985, c. S-19

"rate of indexation" of a member of a pension plan, in relation to a year, means,

(a) for the purpose of sections 55f (inflation adjustments, pensions) and 55g (inflation adjustments, deferreds), the amount given by the following formula, if positive, and nil otherwise:

$$[(\tfrac{3}{4} \times U) - 0.01]$$

in which "U" is the unadjusted rate of indexation of the member for the year; and

(b) for the purpose of sections 55i (retrospective scheme, pensions), 55j (retrospective scheme, deferreds), 55k (retrospective adjustments, pensions-in-pay) and 55-l (retrospective adjustments, deferred pensions), the amount given by the following formula:

$$\frac{[(A \times W) + (B \times X) + (C \times Y) + (D \times Z)]}{(A + B + C + D)}$$

in which,

"A" is the aggregate of the amounts of the basic benefits, determined in accordance with the prescribed rules, accrued under the plan for the member in respect of service for the period beginning on the 1st day of January, 1991 and ending on the 31st day of December, 1995,

"B" is the aggregate of the amounts of the basic benefits, determined in accordance with the prescribed rules, accrued under the plan for the member in respect of service for the period beginning on the 1st day of January, 1996 and ending on the 31st day of December, 2000,

"C" is the aggregate of the amounts of the basic benefits, determined in accordance with the pre-

scribed rules, accrued under the plan for the member in respect of service for the period beginning on the 1st day of January, 2001 and ending on the 31st day of December, 2005,

"D" is the aggregate of the amounts of the basic benefits, determined in accordance with the prescribed rules, accrued under the plan for the member in respect of service after 2005,

"W" is the amount determined by the following formula, if positive, and nil otherwise:

$$[(3/4 \times U) - R]$$

in which "U" is the unadjusted rate of indexation of the member for the year and "R" is,

(i) 0.025 for a year that begins on or before the 31st day of December, 1996, and

(ii) 0.020 for a year that begins on or after the 1st day of Janaury, 1997,

"X" is the amount determined by the following formula, if positive, and nil otherwise:

$$[(3/4 \times U) - 0.020]$$

in which "U" is the unadjusted rate of indexation of the member for the year,

"Y" is the amount determined by the following formula, if positive, and nil otherwise:

$$[(3/4 \times U) - 0.015]$$

in which "U" is the unadjusted rate of indexation of the member for the year, and

"Z" is the amount determined by the following formula, if positive, and nil otherwise:

$$[(3/4 \times U) - 0.010]$$

in which "U" is the unadjusted rate of indexation of the member for the year;

"retroactive adjustment factor" of a member of a pension plan, in relation to a year, means the amount that would be

the adjustment factor of the member for that year if the definition of "rate of indexation" of the member, in relation to the year, were equal to the amount given by the following formula, if positive, and nil otherwise:

$$[(¾ \times U) - R]$$

in which,

"U" is the unadjusted rate of indexation of the member for the year, and

"R" is,

(a) 0.025 for a year that begins on or before the 31st day of December, 1996; and

(b) 0.020 for a year that begins on or after the 1st day of January, 1997;

"retrospective inflation adjustment" means, in relation to a pension plan, any adjustment that is required to be made to a pension benefit or pension, as the case may be, under the plan in accordance with the provisions of any of subsections 55i (7) and (8), 55j (9), (10), (11) and (12) and sections 55k and 55-l;

"unadjusted rate of indexation" of a member of a pension plan, means, in relation to a year,

(a) for the purpose of sections 55f (inflation adjustments, pensions) and 55g (inflation adjustments, deferreds), the lesser of,

(i) 0.08, and

(ii) the aggregate of,

(A) the inflation factor of the member for the year, and

(B) the lesser of,

(1) 0.08 less the inflation factor of the member for the year, if the result is positive, and nil otherwise; and

(2) the amount if positive and nil otherwise by which,

(i) the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

exceeds,

(ii) the deflation factor for the year; and

(b) for the purpose of sections 55i (retrospective scheme, pensions), 55j (retrospective scheme, deferreds), 55k (retrospective adjustments, pensions-in-pay) and 55-1 (retrospective adjustments, deferred pensions), the lesser of,

(i) 0.06 for a year that begins on or before the 31st day of December, 2005 or 0.08 for a year that begins on or after the 1st day of January, 2006, and

(ii) the aggregate of,

(A) the inflation factor of the member for the year, and

(B) the lesser of,

(1) 0.06 for a year that begins on or before the 31st day of December, 2005 or 0.08 for a year that begins on or after the 1st day of January, 2006 less the inflation factor of the member for the year, if the result is positive, and nil otherwise; and

(2) the amount if positive and nil otherwise by which,

(i) the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

exceeds,

(ii) the deflation factor for the year;

"year" means a period of twelve consecutive months.

Adjustments for inflation

55b.—(1) Every pension plan maintained on or after the 1st day of January, 1991 shall provide the adjustments for inflation that are required,

(a) with respect to pensions, by sections 55f (inflation adjustments, pensions) and 55h (defined contribution benefits and MEPPs), or if the administrator elects under sections 55d to provide retrospective inflation adjustments, by sections 55i (retrospective scheme, pensions) and 55k (retrospective adjustments, pensions-in-pay);

(b) with respect to deferred benefits and deferred pensions, by section 55g (inflation adjustments, deferreds), or if the administrator elects under section 55d to provide retrospective inflation adjustments, by sections 55j (retrospective scheme, deferreds) and 55-l (retrospective adjustments, deferred pensions).

Exemption

(2) On application by the administrator of a pension plan, the Superintendent may exempt the pension plan from the application of sections 55b to 55-l,

(a) if the Superintendent is satisfied that the plan provides greater protection against inflation than is required by sections 55f to 55-l;

(b) if the members of the plan and the employers, or their respective representatives, agree that the plan should be exempted or, in the absence of such agreement, if the Superintendent is satisfied that the protection against inflation provided by the plan meets prescribed conditions; and

(c) if an actuary selected in accordance with subsection (3) certifies that the protection provided by the plan against inflation is greater than is required by sections 55f to 55-l.

Selection of actuary

(3) The actuary referred to in clause (2) (c) shall be selected by agreement between the members of the pension plan and the employers, or their respective representatives, and in the absence of such agreement shall be selected by the Superintendent.

Use of plan surplus

(4) Sections 55m (surplus) and 55n (surplus and winding up) apply, with necessary modifications, to a pension plan that is exempted under subsection (1).

Conforming amendments

55c.—(1) Every employer who maintains a pension plan on the 1st day of January, 1991 shall amend the plan before the 1st day of January, 1994 to conform with sections 55f (inflation adjustments, pensions) and 55g (inflation adjustments, deferreds) and any regulations made thereunder.

Exception

(2) Subject to subsection (5), if a pension plan is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to section 55f or 55g or any regulation made thereunder and that is in effect on the 1st day of January, 1991, the parties to the collective agreement or arbitration award shall amend the plan to conform to sections 55f and 55g and any regulations made thereunder not later than the earlier of,

R.S.O. 1980, c. 228

(a) the 1st day of January, 1995; and

(b) the 1st day of January, 1994, if the collective agreement or arbitration award expires before that date.

Registration

(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to section 55f or 55g or any regulation made thereunder and that is the subject of an application for registration submitted after the 1st day of January, 1991, if the collective agreement was entered into or the arbitration award was made before the 1st day of January, 1991 and the plan would have been eligible for registration under the Act if it were read without reference to section 55f or 55g.

Application of subs. (2)

(4) Subsection (2) applies to a pension plan referred to in subsection (3).

Relieving provision

(5) If a pension plan referred to in subsection (2) or (3) contains provisions that can reasonably be considered to provide protection against inflation, the amount and extent of the protection shall be taken into account in determining the adjustments required under sections 55f and 55g and shall be deemed to form part of those adjustments.

Election of retrospective inflation adjustments

55d.—(1) The administrator of a pension plan may elect in the prescribed form before the 1st day of January, 1991 or such later date as may be prescribed to provide to the members of the pension plan the retrospective inflation adjustments described in sections 55i to 55-l.

Superintendent's approval required

(2) An election under subsection (1) is not effective until the Superintendent approves it.

Approval of election.

(3) The Superintendent may approve an election under subsection (1),

(a) if the Superintendent is satisfied that the aggregate cost, as determined in accordance with prescribed rules, of the adjustments under the pension plan that are described in sections 55i to 55-l will not be less than the aggregate cost, as determined in accordance with prescribed rules, of the adjustments under the plan that would be required if sections 55f (inflation adjustments, pensions), 55g (inflation adjustments, deferreds) and 55h (defined contribution benefits and MEPPs) and subsection (5) applied with respect to the pension plan; and

(b) if the election meets the prescribed conditions.

Application of ss. 55f to 55h

(4) If an election is made under this section, sections 55c (conforming amendments), 55f (inflation adjustments, pensions) and 55g (inflation adjustments, deferreds) do not apply in respect of the pension plan.

Amendments void

(5) An amendment to a pension plan in respect of which an election is made under this section is void if the amendment purports to reduce the level or coverage of any benefit or right that was promised under the plan as of the 1st day of March, 1989, unless the Superintendent is satisfied that the amendment was not made in contemplation of the enactment of the election described in this section.

Cost limitation

55e. Notwithstanding anything in sections 55i to 55-l except subsection 55d (3), the retrospective inflation adjustments to a pension plan for any year may be restricted in prescribed manner where the cost, as determined in accordance with prescribed rules, of the retrospective inflation adjustments would otherwise exceed one per cent of the aggregate earnings of the members of the plan for the year as determined in accordance with prescribed rules.

Inflation adjustments, pensions

55f.—(1) In this section,

"adjustment factor" means one if, at any time in the year, the member of the plan is more than four years younger than the normal retirement date under the plan and in any other circumstance has the meaning set out in section 55a (definitions);

"indexed portion" means the lesser of,

(a) the amount of the basic pension payable to a member of a pension plan for the first year the basic pension commences to be paid to the member; and

(b) the amount given by the following formula:

$$[A \times 0.02 \times B]$$

in which,

"A" is the Year's Maximum Pensionable Earnings for that first year, and

"B" is the lesser of the number of years, expressed to include any fraction of a year, of pensionable service of the member under the plan and 30.

Idem

(2) Unless the administrator of a pension plan elects under section 55d to provide retrospective inflation adjustments, every basic pension, other than a deferred pension described in subsection 55g (2), payable under a pension plan other than a multi-employer pension plan, shall be adjusted in accordance with this section.

Accrual date

(3) The adjustment provided in this section shall be in respect only of basic benefits that accrue in accordance with prescribed rules after the 31st day of December, 1990 to members of pension plans in respect of their employment in Ontario.

Adjustment rule

(4) Subject to subsection (5), the indexed portion of the basic pension of a member of a pension plan payable for any particular year to the member shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the first year that the basic pension is payable, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent year, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the adjustment factor of the member for the year.

Adjustment option

(5) If a pension plan specifies an annual date on which pensions are to be adjusted in accordance with this section, the

indexed portion of the basic pension of a member of the plan payable for any particular period to the member shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the period commencing on the date the basic pension commences to be payable and ending immediately before the second subsequent annual date or, if the date of commencement falls on an annual date, the first subsequent annual date, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the adjustment factor of the member for the period.

Inflation adjustments, deferreds

55g.—(1) In this section, "indexed portion" means that part of the basic benefit that gives rise to an annual pension payable to a member of a pension plan equal to the lesser of,

(a) the amount of the annual pension in respect of the basic benefit, calculated without reference to this section; and

(b) the amount given by the following formula:

$$(A \times 0.02 \times B)$$

in which,

"A" is the Year's Maximum Pensionable Earnings for the year in which the member terminated the employment that is related to the member's benefit under the plan; and "B" is the lesser of the number of years, expressed to include any fraction of a year, of pensionable service of the member under the plan and 30.

Idem

(2) Unless the administrator of a pension plan elects under section 55d to provide retrospective inflation adjustments, every basic benefit that is or forms part of a deferred benefit to which a member of a pension plan other than a multi-employer pension plan is entitled under subsection 38 (3) and

the deferred pension in respect of that basic benefit shall be adjusted in accordance with this section.

Accrual date

(3) The adjustment provided in this section shall be in respect only of basic benefits that accrue in accordance with prescribed rules after the 31st day of December, 1990 to members of pension plans as a result of their employment in Ontario.

Adjustment rule

(4) Subject to subsection (5), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 38 (3) to which a member of a pension plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the first year following the date on which the member's employment is terminated, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent year preceding the year in which the deferred pension in respect of the deferred benefit commences to be paid to the member, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the adjustment factor of the member for the year.

Adjustment option

(5) If a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55f (inflation adjustments, pensions), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 38 (3) to which a member of the plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the period commencing on the date on which the member's employment that is related to the benefit is terminated and ending immediately before the second subsequent annual date or, if the date of termination falls on the annual date, the first subsequent annual date, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent period that precedes the date on which the deferred pension in respect of the deferred benefit commences to be paid to the mem-

ber and that commences on an annual date and ends immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the adjustment factor of the member for the period.

Deferred pensions

(6) The part of the deferred pension payable to a member of a pension plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (4), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal to,

(a) for the year in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection, and the adjustment factor of the member for the year; and

(b) for each subsequent year, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding year, and the adjustment factor of the member for the year.

Adjustment option

(7) If a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55f (inflation adjustments, pensions), the part of the deferred pension payable to a member of the plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (5), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal,

(a) for the period that commences on an annual date and ends immediately before the first subsequent annual date and in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection, and the adjustment factor of the member for the year; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding period, and the adjustment factor of the member for the period.

Defined contribution benefits and MEPPs

55h.—(1) A member of a pension plan who is entitled to a defined contribution benefit under the plan is entitled to require the administrator to provide in respect of the benefit a pension that reflects in whole or in part increases in the Consumer Price Index after the member commences to receive the pension.

Multi-employer plans

(2) A member of a multi-employer plan who is entitled to a benefit under the plan is entitled to require the administrator to provide in respect of the benefit a pension that reflects in whole or in part increases in the Consumer Price Index after the member commences to receive the pension.

Direction

(3) A member may exercise his or her entitlement under this section by delivering to the administrator within the prescribed period of time a direction in a form supplied by the Superintendent.

Compliance with direction

(4) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

Actuarial present value

(5) The actuarial present value of a pension payable in accordance with this section shall at least equal but need not be greater than the actuarial present value of the pension that would be payable in the absence of the entitlement under this section.

Prescribed requirements

(6) A pension payable in accordance with this section shall meet prescribed requirements.

Retrospective scheme, pensions

55i.—(1) In this section,

"adjustment factor" of a member of a pension plan, in relation to a year, means one,

(a) if the year begins on or before the 31st day of December, 2006 and if at any time in the year the member of the plan is younger than one plus the normal retirement date under the plan; and

(b) if the year begins after the 31st day of December, 2006 and if at any time in the year the member of the plan is more than four years younger than the normal retirement date under the plan,

and in any other circumstance has the meaning set out in section 55a;

"indexed portion" means the lesser of,

(a) the amount of the basic pension payable to a member of a pension plan for the first year the basic pension commences to be paid to the member; and

(b) the amount given by the following formula:

$$(A \times 0.02 \times B)$$

in which,

"A" is the Year's Maximum Pensionable Earnings for that first year, and

"B" is the lesser of the number of years, expressed to include any fraction of a year, of pensionable service of the member under the plan and 30.

Application

(2) This section applies if the administrator of a pension plan elects under section 55d to provide retrospective inflation adjustments.

Idem

(3) Subsections (4) and (5) apply only in respect of basic benefits, other than deferred benefits mentioned in subsection 55j (4), that accrue in accordance with prescribed rules after December 31, 1990 to members of pension plans in respect of their employment in Ontario.

Adjustment rule

(4) Subject to subsection (5), the indexed portion of the basic pension of a member of a pension plan payable for any particular year to the member shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the first year that the basic pension is payable, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent year, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the adjustment factor of the member for the year.

Adjustment option

(5) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with this section, the indexed portion of the basic pension of a member of the plan payable for any particular period to the member shall be adjusted in such a manner that the amount of the indexed

portion is, after adjustment under this subsection, at least equal to,

(a) for the period commencing on the date the basic pension commences to be payable and ending immediately before the second subsequent annual date or, where the date of commencement falls on an annual date, the first subsequent annual date, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the adjustment factor of the member for the period.

Application

(6) Subsections (7) and (8),

(a) apply only in respect of basic benefits, other than deferred benefits mentioned in subsection 55j (9), that have accrued in accordance with prescribed rules before the 1st of January, 1991 to members of pension plans as a result of their employment in Ontario; and

(b) do not apply in respect of any member of a pension plan who,

(i) has commenced on or before the 1st of January, 1991 to be paid a pension under the plan, or

(ii) on or before the 1st day of January, 1991 is entitled to a deferred benefit mentioned in subsection 37 (3) or 38 (3).

Retrospective adjustments

(7) Subject to subsection (8), the indexed portion of the basic pension of a member of a pension plan payable for any particular year to the member shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the first year that the pension is payable, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent year, the product of the amount of the indexed portion after adjustment under this subsection for the immediately preceding year and the retroactive adjustment factor of the member for the year.

Adjustment option

(8) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with this section, the indexed portion of the basic pension of a member of the plan payable for any particular period to the member shall be adjusted in such a manner that the amount of the indexed portion is after adjustment under this subsection at least equal to,

(a) for the period commencing on the date the basic pension commences to be payable and ending immediately before the second subsequent annual date or, where the date of commencement falls on an annual date, the first subsequent annual date, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the retroactive adjustment factor of the member for the period.

Retrospective scheme, deferreds

55j.—(1) In this section, "indexed portion" means that part of the basic benefit that gives rise to an annual pension payable to a member of a pension plan equal to the lesser of,

(a) the amount of the annual pension in respect of the basic benefit, calculated without reference to this section; and

(b) the amount given by the following formula:

$$(A \times 0.02 \times B)$$

in which,

"A" is the Year's Maximum Pensionable Earnings for the year in which the member terminated employment; and

"B" is the lesser of the number of years, expressed to include any fraction of a year, of pensionable service of the member under the plan and 30.

Application

(2) This section applies if the administrator of a pension plan elects under section 55d to provide retrospective inflation adjustments.

Idem

(3) Subsections (4) and (5) apply only in respect of basic benefits that accrue, in accordance with prescribed rules, after December 31, 1990 to members of pension plans in respect of their employment in Ontario.

Adjustment rule

(4) Subject to subsection (5), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 38 (3) to which a member of a pension plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the first year following the date on which the member's employment is terminated, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent year preceding the year in which the deferred pension in respect of the deferred benefit commences to be paid to the member, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the adjustment factor of the member for the year.

Adjustment option

(5) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retrospective scheme, pensions), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 38 (3) to which a member of the plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the period commencing on the date on which the member's employment is terminated and ending immediately before the second subsequent annual date or, where the date of termination falls on the annual date, the first subsequent annual date, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent period that precedes the date on which the deferred pension in respect of the deferred benefit commences to be paid to the member and that commences on an annual date and ends immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the adjustment factor of the member for the period.

Deferred pensions

(6) The part of the deferred pension payable to a member of a pension plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (4), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal to,

(a) for the year in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection, and the adjustment factor of the member for the year; and

(b) for each subsequent year, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding year, and the adjustment factor of the member for the year.

Adjustment option

(7) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retrospective scheme, pensions), the part of the deferred pension payable to a member of the plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (5), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal,

(a) for the period that commences on an annual date and ends immediately before the first subsequent annual date and in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection and the adjustment factor of the member for the year; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of that part of the deferred pension payable, after

adjustment under this subsection for the immediately preceding period, and the adjustment factor of the member for the period,

Application

(8) Subsections (9) and (10),

(a) apply only in respect of basic benefits that have accrued in accordance with prescribed rules before the 1st of January, 1991 to members of pension plans as a result of their employment in Ontario; and

(b) do not apply in respect of a member of a pension plan who,

(i) has commenced, on or before the 1st of January, 1991 to be paid a pension under the plan, or

(ii) on or before the 1st day of January, 1991, is entitled to a deferred benefit mentioned in subsection 37 (3) or 38 (3).

Adjustment rule

(9) Subject to subsection (10), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned to in subsection 37 (3) or 38 (3) to which a member of a pension plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the first year following the date on which the member's employment is terminated, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent year preceding the year in which the deferred pension in respect of the deferred benefit commences to be paid to the member, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the retroactive adjustment factor of the member for the year.

Adjustment option

(10) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retrospective scheme, pensions), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 37 (3) or 38 (3) to which a member of the plan is entitled shall be adjusted in such a manner that the

amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the period commencing on the date on which the member's employment is terminated and ending immediately before the second subsequent annual date or, where the date of termination falls on the annual date, the first subsequent annual date, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent period that precedes the date on which the deferred pension in respect of the deferred benefit commences to be paid to the member and that commences on an annual date and ends immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the retroactive adjustment factor of the member for the period.

Deferred pensions

(11) The part of the deferred pension payable to a member of a pension plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (9), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal to,

(a) for the year in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection, and the retroactive adjustment factor of the member for the year; and

(b) for each subsequent year, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding year, and the retroactive adjustment factor of the member for the year.

Adjustment option

(12) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retrospective scheme, pensions), the part of the deferred pension payable to a member of the plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (10), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal,

(a) for the period that commences on an annual date and ends immediately before the first subsequent annual date and in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection and the retroactive adjustment factor of the member for the year; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding period, and the retroactive adjustment factor of the member for the period.

Retrospective adjustments, pensions-in-pay

55k.—(1) In this section,

"adjustment factor" of a member of a pension plan, in relation to a year, means one,

(a) if the year begins on or before the 31st day of December, 2006 and if at any time in the year the member of the plan is younger than one plus the normal retirement date under the plan; and

(b) if the year begins after the 31st day of December, 2006 and if at any time in the year the member of the plan is more than four years younger than the normal retirement date under the plan,

and in any other circumstance has the meaning set out in section 55a;

"indexed portion" means the lesser of,

(a) the amount of the basic pension payable to a member of the plan for 1991; and

(b) the amount given by the following formula:

$$(A \times 0.02 \times B)$$

in which,

"A" is the Year's Maximum Pensionable Earnings for 1991, and

"B" is the lesser of the number of years, expressed to include any fraction of a year, of pensionable service of the member under the plan and 30.

Application

(2) This section applies if the administrator of a pension plan elects under section 55d to provide retrospective inflation adjustments.

Adjustment rule

(3) Where a basic pension has commenced, on or before January 1st, 1991, to be paid to a member of a pension plan, the indexed portion of the basic pension payable for any particular year shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for 1991, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent year, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the retroactive adjustment factor of the member for the year.

Adjustment option

(4) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retroactive scheme, pensions) and a basic pension has commenced, on or before the 1st day of January, 1991, to be paid to a member of the pension plan, the indexed portion of the basic pension payable for any particular period shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the period that commences on the 1st day of January, 1991 and ends immediately before the annual date that occurs in 1992, the amount of the indexed portion, calculated without reference to this section; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the retroactive adjustment factor of the member for the period.

Retrospective adjustments, deferred pensions

55-1.—(1) In this section,

"adjustment factor" of a member of a pension plan, in relation to a year, means one,

(a) if the year begins on or before the 31st day of December, 2006 and if at any time in the year the member of the plan is younger than one plus the normal retirement date under the plan; and

(b) if the year begins after the 31st day of December, 2006 and if at any time in the year the member of the plan is more than four years younger than the normal retirement date under the plan,

and in any other circumstance has the meaning set out in section 55a;

"indexed portion" means that part of the basic benefit that gives rise to an annual pension payable to a member of a pension plan equal to the lesser of,

(a) the amount of the annual pension in respect of the basic benefit, calculated without reference to this section; and

(b) the amount given by the following formula:

$$(A \times 0.02 \times B)$$

in which,

"A" is the Year's Maximum Pensionable Earnings for 1991, and

"B" is the lesser of the number of years, expressed to include any fraction of a year, of pensionable service of the member under the plan and 30.

Application

(2) This section applies if the administrator of a pension plan elects under section 55d to provide retrospective inflation adjustments.

Idem

(3) This section applies in respect of members of a pension plan who have terminated employment under the plan and who, on or before January 1st, 1991, are entitled under the plan to a deferred benefit mentioned in subsection 37 (3) or 38 (3).

Adjustment rule

(4) Subject to subsection (5), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 37 (3) or 38 (3) to which a member of a

pension plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for 1991, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent year preceding the year in which the deferred pension in respect of the deferred benefit commences to be paid to the member, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding year, and the retroactive adjustment factor of the member for the year.

Adjustment option

(5) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retrospective scheme, pensions), the indexed portion of the basic benefit that is or forms part of a deferred benefit mentioned in subsection 37 (3) or 38 (3) to which a member of the plan is entitled shall be adjusted in such a manner that the amount of the indexed portion is, after adjustment under this subsection, at least equal to,

(a) for the period commencing on January 1st, 1991 and ending immediately before the second subsequent annual date or, where January 1st, 1991 falls on an annual date, the first subsequent annual date, the amount of the indexed portion calculated without reference to this section; and

(b) for each subsequent period that precedes the date on which the deferred pension in respect of the deferred benefit commences to be paid to the member and that commences on an annual date and ends immediately before the next subsequent annual date, the product of the amount of the indexed portion, after adjustment under this subsection for the immediately preceding period, and the retroactive adjustment factor of the member for the period.

Deferred pensions

(6) The part of the deferred pension payable to a member of a pension plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (4), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal to,

(a) for the year in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension, calculated without reference to this subsection, and the retroactive adjustment factor of the member for the year; and

(b) for each subsequent year, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding year, and the retroactive adjustment factor of the member for the year.

Adjustment option

(7) Where a pension plan specifies an annual date on which pensions are to be adjusted in accordance with section 55i (retrospective scheme, pensions), the part of the deferred pension payable to a member of the plan that relates to the indexed portion of the basic benefit, after final adjustment in accordance with subsection (5), shall be adjusted in such a manner that the amount of that part of the deferred pension is, after adjustment under this subsection, at least equal,

(a) for the period that commences on an annual date and ends immediately before the first subsequent annual date and in which the deferred pension commences to be payable, the product of the amount of that part of the deferred pension calculated without reference to this subsection and the retroactive adjustment factor of the member for the year; and

(b) for each subsequent period commencing on an annual date and ending immediately before the next subsequent annual date, the product of the amount of that part of the deferred pension payable, after adjustment under this subsection for the immediately preceding period, and the retroactive adjustment factor of the member for the period.

Surplus

55m.—(1) An employer whose employees are members of a pension plan, other than a multi-employer pension plan, that meets the requirements of subsection (2) is entitled to be paid from the related pension fund out of surplus that accrued before the 1st day of January, 1987 the amount described in subsection (4).

Requirements

(2) The requirements of the pension plan referred to in subsection (1) are,

(a) that the pension plan be amended by provide for the adjustments under the plan that are described in subsection (3);

(b) that no amendment to the pension plan be made that reduces the level or coverage of any benefit or right that was promised under the plan as of the 1st day of March, 1989, unless it is reasonable to consider that the amendment was not made in contemplation of the enactment of this section; and

(c) that the pension plan meet the prescribed conditions.

Adjustments

(3) The adjustments referred to in clause (2) (a) under the pension plan are those that would be described in sections 55i to 55-1 if the following modifications were made:

1. The definition of "adjustment factor" in each of those sections is changed to read as follows:

"adjustment factor" of a member of a pension plan, in relation to a year, means the total of one and the rate of indexation but, for the purpose of sections 55i, 55k and 55-1, means one if, at any time in the year, the member of the plan is more than four years younger than the normal retirement date under the plan.

2. The definition of "retroactive adjustment factor" in section 55a is changed to reach as follows:

"retroactive adjustment factor" of a member of a pension plan, in relation to a year, means the amount that would be the adjustment factor of the member for the year if the definition of "rate of indexation" of the member, in relation to the year, were equal to the amount given by the following formula, if positive, and nil otherwise:

$$[(¾ \times U) - 0.20]$$

in which "U" is the unadjusted rate of indexation of the member for the year.

3. The definition of "inflation carry-forward" in section 55a is changed to read as follows:

"inflation carry-forward" of a member of a pension plan, at the end of a year, means the amount given by the following formula, if positive, and nil otherwise:

$$[(A + B) - C - D]$$

in which,

"A" is the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

"B" is the inflation factor of the member for the year less 0.08, if the result is positive, and nil otherwise,

"C" is the deflation factor for the year, and

"D" is the lesser of,

(a) 0.08 less the inflation factor of the member for the year, if the result is positive, and nil otherwise, and

(b) the amount given by the following formula, if positive, and nil otherwise:

$$(A - C)$$

in which "A" and "C" are defined as above.

4. The definition of "rate of indexation" in section 55a is changed to read as follows:

"rate of indexation" of a member of a pension plan, in relation to a year, means the amount given by the following formula, if positive, and nil otherwise:

$$[(¾ \times U) - 0.01]$$

in which "U" is the unadjusted rate of indexation of the member for the year.

5. The definition of "unadjusted rate of indexation" in section 55a is changed to read as follows:

"unadjusted rate of indexation" of a member of a pension plan, means, in relation to a year, the lesser of,

(a) 0.08; and

(b) the aggregate of,

(i) the inflation factor of the member for the year, and

(ii) the lesser of,

(A) 0.08 less the inflation factor of the member for the year, if the result is positive, and nil otherwise, and

(B) the amount if positive and nil otherwise of the amount by which,

(1) the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

exceeds,

(2) the deflation factor for the year

Amount

(4) The amount referred to in subsection (1) is the lesser of,

(a) the amount of surplus that remains in the pension fund, after provision has been made for the adjustments under the pension plan that are described in subsection (3); and

(b) the aggregate cost, as determined in accordance with prescribed rules, of adjustments under the pension plan that would be referred to in the definition of "retroactive inflation adjustment" in section 55a if,

(i) the modifications described in subsection (3) were made, and

(ii) the words "at least" were deleted in subsections 55i (7) and (8), 55j (9), (10), (11) and (12) and sections 55k and 55-l.

Entitlement

(5) Subsection (1) applies whether or not the employer would have been entitled, but for this section, to all or any part of the surplus that accrued before the 1st day of January, 1987.

Coming into force

(6) This section shall be deemed to have come into force on the 1st day of January, 1987.

Surplus and winding up

55n.—(1) This section applies to pension plans, other than pension plans in respect of which the Commission has given a consent under clause 7a (2) (c) of Ontario Regulation 708/87 made under this Act, that are terminated in whole or in part after the 9th day of December, 1986, except with respect to payments made from surplus in accordance with section 7a of the Regulation.

Idem

(2) Subject to subsection (3), where a pension plan other than a multi-employer pension plan is wound up in whole or in part, and there is held in the related pension fund money that is surplus, the pension plan shall be deemed to be amended immediately before the date of termination of the plan to provide benefits under the plan to members affected by the wind up equal to,

(a) in any case where there is sufficient surplus to provide the benefits that would be provided under the plan to the members affected if the adjustments described in subsection (4) were provided under the plan, those benefits; and

(b) in any other case, the benefits that could be provided under the plan to the affected members if the surplus attributable to the members, as determined in accordance with the prescribed rules, were used to provide, in accordance with prescribed rules, adjustments to the benefits in respect of inflation protection.

No amendment required

(3) Subsection (2) does not apply if the pension plan provides for adjustments in excess of the adjustments described in subsection (4) and, where a pension plan referred to in subsection 55c (2) or (3) contains provisions that can reasonably be considered to provide protection against inflation, the provisions shall be taken into account in the application of this subsection.

Adjustments

(4) The adjustments referred to in subsection (3) under the pension plan are those that would be described in sections 55i to 55-l if the following modifications were made:

1. The definition of "adjustment factor" in each of those subsections is as follows:

"adjustment factor" of a member of a pension plan, in relation to a year, means the total of one and

the rate of indexation but, for the purposes of sections 55i, 55k and 55-l, means one if, at any time in the year, the member is more than four years younger than the normal retirement date under the plan.

2. The definition of "retroactive adjustment factor" in section 55a is changed to read as follows:

"retroactive adjustment factor" of a member of a pension plan, in relation to a year, means the amount that would be the adjustment factor of the member for the year if the definition of "rate of indexation" of the member, in relation to the year, were equal to the amount given by the following formula, if positive, and nil otherwise:

$$[(¾ \times U) - 0.10]$$

in which "U" is the unadjusted rate of indexation of the member for the year.

3. The definition of "inflation carry-forward" in section 55a is changed to read as follows:

"inflation carry-forward" of a member of a pension plan, at the end of a year, means the amount given by the following formula, if positive, and nil otherwise:

$$[(A + B) - C - D]$$

in which,

"A" is the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

"B" is the inflation factor of the member for the year less 0.08, if the result is positive, and nil otherwise,

"C" is the deflation factor for the year, and

"D" is the lesser of,

(a) 0.08 less the inflation factor of the member for the year, if the result is positive, and nil otherwise, and

(b) the amount given by the following formula, if positive, and nil otherwise:

$$(A - C)$$

in which "A" and "C" are defined as above.

4. The definition of "rate of indexation" in section 55a is changed to read as follows:

"rate of indexation" of a member of a pension plan, in relation to a year, means the amount given by the following formula, if positive, and nil otherwise:

$$[(¾ \times U) - 0.01]$$

in which "U" is the unadjusted rate of indexation of the member for the year.

5. The definition of "unadjusted rate of indexation" in section 55a is changed to read as follows:

"unadjusted rate of indexation" of a member of a pension plan, means, in relation to a year, the lesser of,

(a) 0.08; and

(b) the aggregate of,

(i) the inflation factor of the member for the year, and

(ii) the lesser of,

(A) 0.08 less the inflation factor of the member for the year, if the result is positive, and nil otherwise, and

(B) the amount if positive and nil otherwise of the amount by which,

(1) the inflation carry-forward of the member at the end of the immediately preceding year, if defined for that time, and nil otherwise,

exceeds,

(2) the deflation factor for the year

Amount

(5) In the case of a pension plan described in subsection (2), if after provision for the adjustments resulting from the amendment described therein, there remains in the related pension fund money that is surplus and that is attributable, as determined in accordance with prescribed rules, to the members affected by the wind up, the pension plan shall be deemed to be amended immediately before the date of termination of the plan to provide payment to each affected member of the plan who is entitled on the date of termination of the plan to a contributory benefit accrued before the 1st day of January, 1987 of a lump sum equal to,

(a) in any case where there is sufficient surplus to provide for the payment to each such member of the amount by which the sum of the member's contributions under the pension plan made before the 1st day of January, 1987 and interest thereon to the date of termination of the plan exceeds one-half of the commuted value or the actuarial present value, on the date of termination of the plan, of the contributory benefit after adjustment in accordance with the amendment described in subsection (2), that amount; and

(b) in any other case, an amount calculated in accordance with the prescribed rules.

Exception

(6) In the case of a pension plan described in subsection (3), the pension plan shall be deemed to be amended immediately before the date of termination to provide for the payments described in subsection (5).

Application

(7) Subsections (5) and (6) apply notwithstanding anything in subsections 40 (1) to (2a).

Conversion

(8) Where a defined benefit accrued to a member of a pension plan is, at any time after the 8th day of February, 1988, converted in whole or in part into a defined contribution benefit, the provisions of subsections (1) to (7) shall be applied as if the plan were wound up at that time.

Coming into force

(9) This section shall be deemed to have come into force on the 1st day of January, 1987.

CONTRIBUTIONS

Funding

56.—(1) A pension plan is not eligible for registration unless it provides for funding sufficient to provide the benefits and rights under the pension plan in accordance with this Act and the regulations.

Payment

(2) An employer required to make contributions under a pension plan, or a person required to make contributions under a pension plan on behalf of an employer, shall make the contributions in the prescribed manner and in accordance with the prescribed requirements for funding,

(a) to the pension fund; or

(b) if benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan. 1987, c. 35, s. 56.

Refund of overpayment

56a.—(1) An employer may apply to the Superintendent for payment out of a pension fund of an overpayment by the employer into the pension fund or an amount paid by the employer that should have been paid out of the pension fund.

Consent by Superintendent

(2) The Superintendent may consent to a payment described in subsection (1) to an employer if the application is made within three months after the end of the fiscal year of the pension fund in which the overpayment or the payment occurred.

Notice to Superintendent

57.—(1) The administrator of a pension plan or, if there is an agent of the administrator responsible for receiving contributions under the pension plan, the administrator and the agent shall give written notice to the Superintendent of a contribution that is not paid when due.

When notice required

(2) The administrator and the agent shall give the notice to the Superintendent within sixty days after the date on which the administrator or the agent first became aware of the failure to pay the contribution.

Multi-employer pension plan

(3) The administrator and the agent of a multi-employer pension plan shall give the notice to the Superintendent within the prescribed period of time after the date on which the administrator or the agent first became aware of the failure to pay the contribution. 1987, c. 35, s. 57.

Trust property

58.—(1) Where an employer receives money from an employee under an arrangement that the employer will pay

the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

Money withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be money received by the employer from the employee.

Accrued contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

Wind up

(4) If a pension plan is being wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the plan an amount of money equal to employer contributions accrued to the date of termination of the plan but not yet due under the plan or regulations.

Lien and charge

(5) The administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4).

Application of subss. (1, 3, 4)

(6) Subsections (1), (3) and (4) apply whether or not the moneys have been kept separate and apart from other money or property of the employer.

Moneys to be paid to insurance company

(7) Subsections (1) to (6) apply with necessary modifications in respect of moneys to be paid to an insurance company that guarantees benefits under a pension plan. 1987, c. 35, s. 58.

Accrual

59.—(1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

Interest

(2) Interest on contributions shall be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements. 1987, c. 35, s. 59.

Application

(3) Subsection (2) does not apply to contributions made in respect of benefits accrued before a prescribed date if all such benefits are guaranteed by an insurance company and the guarantee is given by the insurance company before that date.

Collection of contributions

60. The administrator may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations. 1987, c. 35, s. 60.

Bond

61. The administrator of a multi-employer pension plan may require a person who receives contributions to the pension fund or who administers or invests the pension fund to be bonded in an amount required by the administrator or in the prescribed amount. 1987, c. 35, s. 61.

Statement of employer's obligation

62. An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan. 1987, c. 35, s. 62.

Investment of pension fund

63. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations. 1987, c. 35, s. 63.

LOCKING IN

Refunds

64.—(1) Except as otherwise permitted under this Act, no member is entitled to a payment from a pension fund of contributions made in respect of employment in Ontario or a designated jurisdiction on or after the qualification date, or the interest on the contributions.

Idem

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member or a payment under subsection 40 (4) or clause 40 (2a) (b).

Refund related to past employment

(3) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a benefit under section 37 or under a pension plan that provides for shorter qualification periods in accordance with subsection 65 (1) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment before the 1st day of January, 1987.

Refund related to post-reform employment

(4) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a benefit

under section 38 or under a pension plan that provides for shorter qualification periods in accordance with subsection 65 (1) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment after the 31st day of December, 1986.

Application of subs. (1)

(5) Subsection (1) does not apply,

(a) to prevent the commutation of a benefit under subsection 51 (1) (commuted value);

(b) to prevent a payment under subsection 51 (2);

(ba) to prevent a payment under a pension plan that permits a refund of contributions together with interest thereon to a person who terminates employment after becoming entitled to a benefit under the plan but before the end of the qualification period described in section 37 or 38; or

(c) to such other circumstances as are prescribed.

(6) REPEALED.

Refund with consent

(7) Notwithstanding subsection (1), on application by the administrator, contributions and interest thereon may be refunded to a member with the consent of the Superintendent if the pension plan provides for the refund and the employer has assumed responsibility for funding all benefits associated with the contributions and the pension plan meets prescribed requirements.

(8) REPEALED.

Shorter qualification periods

65.—(1) A pension plan may provide for shorter qualification periods for entitlement to a benefit than those set out in sections 37 and 38.

Refund

(2) A pension plan with a provision described in subsection (1) may permit a refund of contributions together with interest thereon to a person who terminates employment after becoming entitled to a benefit under the plan but before the end of the qualification period described in section 37 or 38.

Void transactions

66.—(1) A transaction is void if it purports to convey, assign, charge, anticipate or give as security,

(a) a right to receive money that is or may become payable under a pension plan; or

(b) assets being transferred from a pension fund.

Exemption for order or separation agreement 1986, c. 4

(2) Subsection (1) does not apply with respect to a transaction required by an order under the *Family Law Act, 1986* or by a domestic contract as defined in Part IV of that Act.

Exemption for fund-to-fund transfer

(3) Subsection (1) does not apply with respect to a transfer of assets from one pension fund to another under subsection 81 (4) or section 82.

Exemption for inter-pension transfers

(4) Subsection (1) does not prevent a transfer of assets from an original pension fund to a successor pension fund.

Exemption from execution, etc.

67.—(1) Money payable under a pension plan is exempt from execution, equitable execution, seizure, attachment or any other process that is taken by a creditor.

Idem

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity under section 43, 44, 49 or subsection 74 (2) is exempt from execution, equitable execution, seizure, attachment or any other process that is taken by a creditor.

Idem

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with section 43, 44, 49 or subsection 74 (2) is exempt from execution, equitable execution, seizure, attachment or any other process that is taken by a creditor.

Order re: family law 1986, c. 4

(4) Subsections (1), (2), and (3) do not apply to prevent execution, equitable execution, seizure, attachment or any other process in satisfaction of an order under the *Family Law Act, 1986* or any other order for support or maintenance enforceable in Ontario.

Application of subs. (4)

(5) Subsection (4) applies to orders whether made before or after the coming into force of this Act. 1987, c. 35, s. 67.

Commutation or surrender

68.—(1) A pension or a benefit of a person under a pension plan, a prescribed retirement savings arrangement for a person, and a life annuity purchased for a person under a pension plan or under a prescribed retirement savings arrangement are not capable of being commuted or surrendered during the life of the person.

Void transaction

(2) A transaction that purports to commute or surrender such a pension, benefit, annuity or prescribed retirement savings arrangement is void.

Application of subss. (1, 2)

(3) Subsections (1) and (2) do not apply to prevent the variation of a pension or benefit under section 50 (variation of payment to disabled person) or the commutation of a benefit under section 51 (commuted value). 1987, c. 35, s. 68.

TERMINATION AND WINDING UP

Winding up

69.—(1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

Notice

(2) The administrator shall give written notice of proposal to wind up the pension plan to,

(a) the Superintendent;

(b) each member of the pension plan;

(c) REPEALED.

(d) each trade union that represents members of the pension plan;

(e) the advisory committee of the pension plan; and

(f) each claimant who is receiving payments under the pension plan on the date of termination.

Notice of partial wind up

(3) In the case of a proposal to wind up part of a pension plan, the administrator is not required to give written notice of the proposal to members or claimants who will not be affected by the proposed partial wind up.

Information

(4) The notice of proposal to wind up shall contain the information prescribed by the regulations.

Fees

(4a) When giving notice of a proposal to wind up a pension plan to the Superintendent, the administrator shall pay the prescribed fee to the Commission.

Idem

(4b) The Superintendent may waive the fee payable under subsection (4a) if the liabilities of the pension plan exceed the assets of the pension fund.

Date of termination

(5) The date of termination of a pension plan that is being wound up shall not be earlier than the date contributions, if

any, by members affected by the wind up cease to be deducted, in the case of contributory benefits, or, in any other case, on the date notice of proposal is given to members.

(6) The Superintendent by order may change the date of termination if the Superintendent is of the opinion that there are reasonable grounds for the change. 1987, c. 35, s. 69. Order by Superintendent

70.—(1) The Superintendent by order may require the wind up of a pension plan in whole or in part if, Winding up order by Superintendent

(a) there is a cessation or suspension of employer contributions under the pension plan;

(b) the employer fails to make contributions under the pension plan as required by this Act or the regulations;

(c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada); R.S.C. 1970, c. B-3

(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;

(e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;

(f) all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person;

(g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up in whole or in part;

(h) in the case of a multi-employer pension plan,

(i) there is a significant reduction in the number of members, or

(ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or

(i) any other prescribed event or prescribed circumstance occurs.

Date and notice

(2) In an order under subsection (1), the Superintendent shall specify the date of termination, the persons or class or classes of persons to whom the administrator shall give notice of the order and the information that shall be given in the notice. 1987, c. 35, s. 70.

Wind up report

71.—(1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out,

(a) the assets and liabilities of the pension plan;

(b) the benefits to be provided under the pension plan to members, former members and claimants;

(c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and

(d) such other information as is prescribed.

Payments out of pension fund after notice of proposal to wind up

(2) No payment shall be made out of the pension fund related to the pension plan in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.

Application of subs. (2)

(3) Subsection (2) does not apply to prevent continuation of payment of a pension or benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.

Approval

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent.

Refusal to approve

(5) The Superintendent may by order refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members, former members and claimants of the pension plan.

Rights and benefits on partial wind up

(6) On the partial wind up of a pension plan, members, former members and claimants shall have benefits and rights that are not less than the benefits and rights they would have on the date of the partial termination. 1987, c. 35, s. 71.

Appointment of administrator to wind up

72.—(1) If a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator fails to act, the Superintendent may act as or may appoint an administrator.

Costs of administration on winding up

(2) The reasonable administration costs of the Superintendent or of the administrator appointed by the Superintendent may be paid out of the pension fund. 1987, c. 35, s. 72.

Notice of entitlements

73.—(1) On the wind up of a pension plan in whole or in part, the administrator shall give to each person entitled to a benefit or to a refund of contributions under the plan a statement setting out the person's entitlement under the pension plan, the options available to the person and any other prescribed information.

Election

(2) If a person to whom notice is given under subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or shall be deemed to have elected to receive immediate payment of a pension, if eligible therefor, or, if not eligible to receive immediate payment of a pension, to receive a pension commencing at the earliest date mentioned in clause 75 (1) (b), and the administrator of the pension plan shall make payment in accordance with the election or deemed election. 1987, c. 35, s. 73.

Determination of benefits and rights

74.—(1) For the purpose of determining the amounts of benefits and rights on the winding up of a pension plan, in whole or in part,

(a) the employment of each member of the plan who is affected by the winding up and who, but for this clause, would have continued employment, shall be deemed to have been terminated on the date of termination of the plan;

(b) each member's benefits as of the date of termination shall be determined as if the member had satisfied all eligibility conditions for a pension benefit under the pension plan; and

(c) provision shall be made for the rights under section 75.

Transfer rights on wind up

(2) A person entitled to a benefit on the wind up of a pension plan, other than a person who is receiving a pension, is entitled to the rights under subsection 43 (1) (transfer) of a member who terminates employment and, for the purpose, subsection 43 (3) does not apply. 1987, c. 35, s. 74.

Combination of age and years of employment

75.—(1) A member in Ontario of a pension plan who is a member mentioned in clause 74 (1) (a) and whose combination of age plus years of continuous employment or active membership in the pension plan equals on the date of termination of the pension plan in whole or in part, at least fifty-five, has the right to receive,

(a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension;

(b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,

(i) the normal retirement date under the pension plan, or

(ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not terminated and if the member's active membership continued to that date; or

(c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not terminated and if the member's active membership continued to that date.

Part year

(2) For the purpose of this section, in determining the combination of age plus employment or active membership, one-twelfth credit shall be given for each month of age and for each month of continuous employment or active membership on the date of termination of the plan.

Member for ten years

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not terminated and if the active membership of the member were continued shall be included in calculating the benefit under subsection (1) of a person who has at least ten years of continuous employment with the employer or has been an active member of the pension plan for at least ten years.

Prorated bridging benefit

(4) For the purposes of subsection (3), if the bridging benefit offered under the pension plan is not related to periods of employment or active membership in the pension plan, the bridging benefit shall be prorated by the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date

on which the member would be entitled to payment of benefits and a full bridging benefit under the pension plan if the pension plan were not terminated.

(5), (6) REPEALED.

(7) For the purpose of clause (1) (a), where — Consent of employer

(a) the consent of an employer is an eligibility requirement under the pension plan necessary to exercise the right to receive payment of an ancillary benefit; and

(b) the member would, but for this subsection, meet all other such eligibility requirements,

the employer shall be deemed to have given the consent.

(8) This section and sections 74 (determination of entitlements), 85, 86 and 87 (guaranteed benefits) apply in respect of the wind up, in whole or in part, of a pension plan where the effective date of termination of the pension plan is on or after the 1st day of April, 1987. — Application of section

(9) A person affected by a wind up who elects to receive a benefit under subsection (1) is not entitled to payment of any payment under subsection 64 (3) or (4). 1987, c. 35, s. 75. — Refund

75a.—(1) For the purposes of this Act, active membership in a pension plan that is terminated in whole or in part includes the period of notice of termination of employment required under Part XII of the *Employment Standards Act*. — Notice of termination of employment; R.S.O. 1980, c. 137

(2) Subsection (1) does not apply for the purpose of calculating the amount of a benefit of a member who is required to make contributions under the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment. — Application

76.—(1) Where a pension plan is terminated and is being wound up in whole or in part, the employer shall pay into the pension fund, — Liability of employer on wind up

(a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and

(b) to the extent not otherwise included in clause (a) the amount, if positive, determined using the formula,

$$(A + B + C + D) - E$$

in which,

"A" is the value of the benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act if the Commission declares that the Guarantee Fund applies to the plan,

"B" is the value of the benefits, other than benefits included in "A", accrued with respect to employment in Ontario that are vested under the pension plan,

"C" is the value of benefits, other than benefits included in "A" or "B", accrued with respect to employment in Ontario that result from the application of section 75, and

"D" is the sum of all lump sums referred in subsection 40 (4) (50 per cent rule), and

"E" is the value of the assets of the pension fund allocated as prescribed for payment of benefits accrued with respect to employment in Ontario.

Payment

(2) The employer shall pay the moneys due under subsection (1) in the prescribed manner and at the prescribed times. 1987, c. 35, s. 76.

77. REPEALED.

Insufficient pension fund

78. Subject to the application of the Guarantee Fund, where the moneys in a pension fund are not sufficient to pay all the benefits on the wind up of the pension plan in whole or in part, the benefits shall be reduced in the prescribed manner. 1987, c. 35, s. 78.

SURPLUS

Payment out of pension fund to employer

79.—(1) Notwithstanding any other provision of this Act except subsection 23 (9) and section 56a, no money may be paid out of a pension fund to an employer without the prior consent of the Commission.

Notice of application

(2) Subject to subsection (3), an employer who applies to the Commission for consent to payment of money that is surplus shall give notice of the application within ten days after making the application,

(a) to the administrator of the pension plan;

(b) to each member of the pension plan;

(c) to each trade union that represents members of the pension plan;

(d) to each claimant who is receiving payments under the pension plan on the date the employer makes the application;

(e) to each former member who terminated employment or membership in the pension plan within the five years preceding the date the employer makes the application;

(f) to the advisory committee, if any, established in respect of the pension fund; and

(g) to the Superintendent.

Idem

(3) An employer who applies for payment only of an amount to which the employer is entitled under section 55m shall give notice of the application within ten days of making the application to the persons mentioned in clauses (2) (a), (c), (f) and (g).

Contents of application

(4) An application shall contain the prescribed information and shall be accompanied by the prescribed fee.

Notice

(5) The employer shall give notice of an application respecting a pension plan that is being wound up in whole or in part to trade unions, if any, that represented members of the pension plan on the date of termination of the plan.

Idem

(6) Where a pension plan is being wound up in part the employer need not give notice of the application to members, former members and claimants of the part of the pension plan that is not being wound up.

Hearing

(7) Subject to subsection (8) and (9), the Commission shall hold a hearing respecting an application.

Idem

(8) The Commission shall not hold a hearing unless, within thirty days after the application is made, a person entitled to be a party to the hearing objects to the application.

Idem

(9) The Commission need not hold a hearing respecting an application by an employer for payment only of an amount to which the employer is entitled under section 55m.

Parties

(10) The parties to a hearing are the employer, those persons to whom the employer is required to give notice of the application, former members, the trustees, if any, of the pension fund, the Superintendent and such other persons as the Commission may specify.

Commission may consent

(11) The Commission may consent to the payment to the employer of money that is surplus out of a pension fund and may attach such terms and conditions to its consent as the Commission considers necessary in the circumstances.

Continuing pension plan

80.—(1) Notwithstanding section 55m, the Commission shall not consent, in respect of a continuing pension plan, to payment to the employer of money that is surplus unless the Commission is satisfied, based on documents and information filed with the Commission,

(a) that the pension plan has a surplus;

(b) that the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or that the applicant is otherwise entitled to withdraw the surplus;

(c) where all pension benefits under the pension plan are guaranteed by an insurance company, that an amount equal to at least two years of the employer's normal cost calculated as prescribed is retained in the pension fund as surplus;

(d) where the members are not required to make contributions under the pension plan, that the greater of,

(i) an amount equal to two years of the employer's normal cost calculated as prescribed, and

(ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

is retained in the pension fund as surplus;

(e) where members are required to make contributions under the pension plan, that the sum of all surplus attributable to contributions paid by members and the greater of,

(i) an amount equal to two years of the employer's normal cost calculated as prescribed, and

(ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

is retained in the pension fund as surplus;

(f) that the applicant and the pension plan comply with all other requirements under this Act in respect of the payment out of a pension fund of money that is surplus.

If no provision in pension plan

(2) A pension plan that does not provide for the payment to an employer of money that is surplus while the plan continues in existence shall be construed to prohibit the payment to the employer of surplus accrued after the 31st day of December, 1986.

Coming into force

(3) Subsection (2) shall be deemed to have come into force on the 1st day of January, 1989.

Wound up pension plan

80a.—(1) The Commission shall not consent, in respect of a pension plan being wound up in whole or in part, to payment to the employer of money that is surplus unless the Commission is satisfied, based on documents and information filed with the Commission,

(a) that the pension plan has a surplus;

(b) that the pension plan provides for payment of money that is surplus to the employer on the wind up of the pension plan;

(c) that provision has been made for the payment of all liabilities of the plan, including liabilities that arise from amendments required under section 55n, calculated as prescribed; and

(d) that the applicant and the plan comply with all other requirements under this Act in respect of the payment out of the pension fund of money that is surplus.

Idem

(2) A pension plan that does not provide for payment to an employer of money that is surplus on the wind up of the plan shall be construed to require that surplus accrued after the 31st day of December, 1986 shall be distributed, on such proportional basis as the Commission orders, on the wind up of the pension plan among members, former members and claimants of the plan.

Coming into force

(3) Subsection (2) shall be deemed to have come into force on the 1st day of January, 1989.

SALES, TRANSFERS AND NEW PLANS

Continuation of benefits under successor employer

81.—(1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

(a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated jurisdiction to the effective date of the sale, assignment or disposition without further accrual;

(b) is entitled to credit in the pension plan of the successor employer for the period of active membership in the employer's pension plan, and for the period of employment with the employer, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and

(c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer and for the period of active membership in the successor employer's pension plan for the purpose of determining eligibility for to benefits under the employer's pension plan.

Idem

(1a) When a transaction described in subsection (1) takes place, the period of employment with the employer of an employee shall be deemed to be a period of employment with the successor employer for the purpose of determining the employee's eligibility for membership in or entitlement to benefits under the pension plan of the successor employer.

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred. Exception

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction. Employment deemed not terminated

(4) Subject to subsection (4a), where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the benefits provided under the employer's pension plan, a transfer of assets shall be made from the pension fund related to the employer's pension plan to the pension fund related to the plan provided by the successor employer in accordance with the prescribed terms and conditions. Transfer on sale

(4a) No transfer shall be made under subsection (4) without the prior consent of the Superintendent. Consent by Superintendent

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the benefits and rights of the members, former members and claimants of the employer's pension plan or that does not meet prescribed terms and conditions. Idem

(6) The Superintendent by order may require the transferee to return to the pension fund, with interest, assets transferred without the prior consent required by subsection (4a). Order for return

(7) REPEALED.

(8) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan, the administrator of the original pension plan shall transfer to the administrator of the new pension plan all the assets and liabilities respecting those members who have elected under section 43 to transfer their entitlement to the new pension plan and the administrator of the new pension plan shall accept the transfer as assets and liabilities of the new plan. Multi-employer pension plan R.S.O. 1980, c. 288

(9) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with Idem

R.S.O. 1980, c. 288

section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan and the members are not entitled to make an election under section 43, the administrator of the original pension plan shall transfer to the administrator of the new pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the new pension plan shall accept them as assets and liabilities, determined as prescribed, of the new plan.

Application of subs. (8), (9)

(10) Subsections (8) and (9) do not apply where there is a reciprocal agreement respecting the pension plans.

Definition "employeur subséquent"

(11) In this section, "successor employer" means the person who acquires the business or the assets of the employer. 1987, c. 35, s. 81.

Adoption of new pension plan

82.—(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

Continuation of benefits

(2) The benefits and rights under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be the benefits and rights under the new pension plan.

Application of subs. (2)

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

Transfer of assets

(4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

Consent by Superintendent

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the benefits and rights of the members and former members and claimants of the original pension plan or that does not meet prescribed terms and conditions.

Order

(6) The Superintendent by order may require the transferee to return to the pension fund assets, with interest calculated in the prescribed manner, transferred without the prior consent

of the Superintendent or transferred contrary to a prescribed term or condition.

(7) REPEALED.

Fund to fund

(8) No transfer of assets shall be made from one pension fund to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 43 or 81 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the purpose, subsections (5) to (7) apply with necessary modifications. 1987, c. 35, s. 82.

PENSION BENEFITS GUARANTEE FUND

Guarantee Fund continued

83.—(1) The Pension Benefits Guarantee Fund is continued.

Administration

(2) The Commission is responsible for the administration of the Guarantee Fund including the investment of the assets of the Guarantee Fund.

Expenses

(3) The Commission may charge to the Guarantee Fund the reasonable expenses incurred by the Commission in the administration of the Guarantee Fund.

Loans to Guarantee Fund

(4) If at any time the amount standing to the credit of the Guarantee Fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Guarantee Fund on such terms and conditions as the Lieutenant Governor in Council directs. 1987, c. 35, s. 83.

Guarantee Fund declaration

84.—(1) The Commission, subject to section 91 (notice and representations), shall declare, in the circumstances mentioned in subsection (2), that the Guarantee Fund applies to a pension plan.

Conditions precedent

(2) The Commission shall make the declaration if,

(a) the pension plan is registered under this Act or is registered in a designated jurisdiction to provide for the reciprocal application of this Act;

(b) the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;

(c) the pension plan is wound up in whole or in part; and

(d) the Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied. 1987, c. 35, s. 84.

Guaranteed benefits

85.—(1) Where the Guarantee Fund is declared by the Commission to apply to a pension plan, the following are guaranteed by the Guarantee Fund, subject to the limitations and qualifications as are set out in this Act or are prescribed:

1. Any pension in respect of employment in Ontario.

2. Any deferred pension in respect of employment in Ontario to which a former member is entitled, if the former member's employment or membership was terminated before the date on which this Act comes into force and the former member was at least forty-five years of age and had at least ten years of continuous employment with the employer, or was a member of the pension plan for a continuous period of at least ten years, at the date of termination of employment.

3. A percentage of any defined pension benefits in respect of employment in Ontario to which a member or former member is entitled under section 37 or 38 (deferred pension), or both, if the member's or former member's employment or membership was terminated on or after the date on which this Act comes into force, equal to 20 per cent if the combination of the member's or former member's age plus years of employment or membership in the pension plan equals fifty, plus an additional ⅓ of 1 per cent for each additional one-twelfth credit of age and employment or membership to a maximum of 100 per cent.

4. All additional voluntary contributions, and the interest thereon, made by members or former members while employed in Ontario.

5. The minimum value of all required contributions made to the pension plan by a member or former member in respect of employment in Ontario plus interest.

6. That part of a deferred pension guaranteed under this subsection to which a former spouse of a member or of a former member is entitled under a domestic contract or an order under the *Family Law Act, 1986*. 1986, c. 4

7. Any pension to which a survivor of a former member is entitled under subsection 49 (1) (death before commencement of payment).

(2) For the purpose of this section, where a member or former member has at least ten years of continuous employment with the employer, a deferred pension or a pension benefit includes bridging benefits. Bridging benefits

(3) In determining the combination of age and membership or employment for subsection (1), one-twelfth credit shall be given for each full month of age and for each full month of continuous employment or membership as of the date of termination of employment. Part year

(4) For the purpose of this section, "pension benefits" includes any benefits or options elected under section 75 (combination of age and years of employment). 1987, c. 35, s. 85. Definition "prestations de retraite"

86. The following are not guaranteed by the Guarantee Fund: Payments not guaranteed

1. The payment of a pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of wind up.

2. Any increase to a pension or pension benefit or the value of a pension or pension benefit that became effective within three years before the date of wind up.

3. The amount of any pension or pension benefit, including any bridging supplement, in excess of $1,000 per month or such greater amount as is prescribed by the regulations.

4. Pension benefits provided under a multi-employer pension plan.

5. Pension benefits provided under a pension plan that provides defined benefits, if the obligation of the employer to contribute to the pension fund is lim-

ited to a fixed amount set out in a collective agreement.

6. Pension benefits provided by prescribed pension plans or prescribed classes of pension plans. 1987, c. 35, s. 86.

Lien for payment out of Guarantee Fund

87.—(1) Where money is paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of a pension plan, the Commission has a lien and charge on the assets of the employer or employers who provided the pension plan.

Amount of lien

(2) The lien and charge is in an amount equal to the amount of the payment out of the Guarantee Fund plus interest thereon calculated at the rate and in the manner prescribed by the regulations.

Real property

(3) The lien and charge does not affect assets that are real property until a notice of the lien and charge that includes a description of the real property is registered in the proper land registry office, and the Commission may so register notice of the lien and charge.

Subrogation

(4) The Commission is subrogated to the rights of the administrator of a pension plan in respect of which the Commission authorizes payment from the Guarantee Fund in satisfaction of a benefit or right. 1987, c. 35, s. 87.

ORDERS

Order by Superintendent

88.—(1) The Superintendent, in the circumstances mentioned in subsection (2), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan.

Condition precedent to order

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

(a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;

(b) that the pension plan does not comply with this Act and the regulations; or

(c) that the administrator of the pension plan, the employer or the other person is contravening this Act or the regulations.

(3) In an order under this section, the Superintendent may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order. Time

(4) An order under this section is not effective unless the reasons for the order are set out in the order. 1987, c. 35, s. 88. Reasons for order

89.—(1) The Superintendent, in the circumstances mentioned in subsection (2), by order may require an administrator to take the action specified in subsection (3). Order by Superintendent

(2) The Superintendent may make an order under this section where the Superintendent is of the opinion, Grounds for order

(a) that the assumptions or methods used in the preparation of a report required under this Act in respect of a pension plan are inappropriate for a pension plan;

(b) that the assumptions or methods used in the preparation of a report required under this Act in respect of a pension plan do not accord with generally accepted actuarial principles or such other requirements as may be prescribed; or

(c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan.

(3) An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report. 1987, c. 35, s. 89. Contents of order

HEARING AND APPEAL

90.—(1) Upon paying the prescribed fee to the Commission, a person may state a case in writing for the decision of the Superintendent upon any question concerning the interpretation or application of the Act or regulations in the circumstances of a pension plan. Stated case

(2) The Superintendent may decline to consider a stated case. Superintendent may decline

(3) The Superintendent shall decline to consider a stated case concerning, Superintendent shall decline

(a) the application of the Pension Benefits Guarantee Fund to a pension plan; or

(b) the payment to an employer of money that is surplus in a pension plan.

Hearing

(4) The Superintendent is not required to hold a hearing respecting a stated case.

Submissions

(5) The Superintendent may invite anyone the Superintendent considers to be concerned in the matter of a stated case to make submissions concerning the stated case.

Costs

(6) If the Superintendent holds a hearing respecting a stated case, the Superintendent may determine and award costs in the matter and sections 93a and 93b apply with necessary modifications.

Fees

(7) If the Superintendent considers a stated case, the person who stated the case shall pay the prescribed fees for the reasonable time and expenses of the Superintendent.

Waiver of fees

(8) The Superintendent may waive the fees payable in respect of a stated case if the Superintendent considers it just an equitable in all the circumstances.

Application of R.S.O. 1980, c. 484

(9) The *Statutory Powers Procedure Act* does not apply to the Superintendent's consideration of a stated case.

Decision

(10) The decision of the Superintendent in a stated case shall be in writing.

Appeal from Superintendent's decision, etc.

91.—(1) Except as provided in subsection (3), a person affected by a decision of the Superintendent may appeal the decision to the Commission.

Interpretation

(2) In subsection (1), "decision" includes an order, an approval, a consent, a refusal to register a pension plan or an amendment to a pension plan, the revocation of a pension plan or an amendment to a pension plan and the appointment of an administrator.

Exception

(3) No appeal may be taken from a decision by the Superintendent,

(a) to register a pension plan, other than a registration made under subsection 11 (4);

(b) to act as an administrator under subsection 20a (1) or as an administrator under subsection 72 (1);

(c) concerning the transmittal of notices under section 27;

(d) specifying a location under clause 30 (2) (b);

(e) requiring a person to supply information or secure an appraisal under section 99;

(f) extending a time limit under section 106; or

(g) respecting notice or document under section 113 (4).

Request for an appeal

(4) A request for an appeal shall be in writing and shall be delivered to the Commission, together with the prescribed fee, within thirty days after service of the Superintendent's decision.

Commission shall hear appeal

(5) The Commission shall hold a hearing of an appeal.

Parties

(6) The parties to an appeal are the person who requests the appeal, the Superintendent, such other persons as the Commission may specify and, if the appeal concerns a pension plan, the administrator, any trustees of the pension plan, any employers who contribute to the pension plan, any trade unions representing members and any members not represented by a trade union.

Power of the Commission

(7) Upon hearing an appeal, the Commission by order,

(a) may confirm, vary or rescind the decision appealed from or substitute its decision for that of the Superintendent; and

(b) may attach such terms and conditions to its order as the Commission considers necessary to give effect to the purposes of this Act.

Idem

(8) In making a decision on an appeal, the Commission may substitute its opinion for that of the Superintendent.

Commission may grant stay

(9) The Commission may grant a stay of a decision that is under appeal on such terms and conditions as the Commission considers appropriate in the circumstances.

Waiver of fees

(10) The Commission may waive the fees payable in respect of an appeal if the Commission considers just and equitable in all the circumstances.

Documents

(11) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Exclusive jurisdiction

92.—(1) The Commission has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any proceeding before it and, subject to subsection (1a), its action or decision thereon is final and conclusive for all purposes.

Appeal to Divisional Court

(1a) An appeal lies to the Divisional Court from any order of the Commission upon a question of law or jurisdiction.

Certified copy of record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the prescribed fee, the Commission shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from. 1987, c. 35, s. 92.

Quorum and votes

93.—(1) Three members of the Commission constitute a quorum for the purposes of a proceeding before the Commission under section 91, and decisions in such proceedings require the vote of a majority of the members of the Commission present at the hearing in the proceeding.

Panels

(2) The Commission may sit in two or more panels simultaneously for the purposes of such proceedings.

Assignment

(3) The head of the Commission shall assign the members of the Commission to its panels and may change an assignment at any time.

Practice and procedure

(3a) The Commission shall determine the practice and procedure to be observed in proceedings before it.

Expiry of member's term of office

(4) Where a proceeding is commenced before the Commission and the term of office on the Commission of a person sitting for the hearing expires or is terminated, other than for cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Commission for the purpose of completing the proceeding in the same manner as if his or her term of office had not expired or been terminated. 1987, c. 35, s. 93.

Costs

93a.—(1) The costs of and incidental to any proceeding before the Commission are in its discretion and may be fixed in any case at a sum certain or may be assessed.

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(3) The Commission may establish a scale under which such costs shall be assessed. Idem

93b.—(1) A party to a proceeding before the Commission may, before or at the conclusion of the proceeding, request an exemption from liability to pay any costs of the proceeding and the Commission may make such an exemption. Exemption from costs

(2) The Commission may award costs in a proceeding to a party who has received an exemption under subsection (1). Award of costs

93c. Sections 138 (prejudgment interest), 139 (postjudgment interest) and 140 (discretion of court) of the *Courts of Justice Act, 1984* apply with necessary modifications to orders of the Superintendent or the Commission. Application of 1984, c. 11

93d. An order of the Superintendent or the Commission, exclusive of the reasons therefor, may be filed in a court of competent jurisdiction and is thereupon enforceable as an order of that court. Enforcement

93e. The *Statutory Powers Procedure Act* does not apply in respect of a decision or order of the Superintendent. Application of R.S.O. 1980, c. 484

PENSION COMMISSION

94.—(1) The Pension Commission of Ontario is continued. Commission continued

(2) The Commission shall be composed of not fewer than five and not more than nine members appointed by the Lieutenant Governor in Council. Composition

(3) The Lieutenant Governor in Council shall appoint the head and the deputy head of the Commission from among the members of the Commission. Head and deputy head

(4) The members of the Commission shall be appointed for terms of not more than three years and may be reappointed for further terms of not more than three years. Term of office

(5) If the head of the Commission is absent or if there is a vacancy in the office of head of the Commission, the deputy head shall act as and have all the powers of the head of the Commission. Authority of deputy head

Acting head

(6) If both the head of the Commission and the deputy head are absent or if there are vacancies in the offices of head of the Commission and deputy head, the member of the Commission designated by the members of the Commission shall act as and have the powers of the head of the Commission.

Vacancies

(7) The Lieutenant Governor in Council may fill any vacancy in the membership of the Commission or in the offices of head or deputy head of the Commission.

Quorum

(8) A majority of the members of the Commission, including the head or deputy head of the Commission, constitutes a quorum.

Employees
R.S.O. 1980, c. 418

(9) Such employees as are necessary to carry out the business of the Commission shall be appointed under the *Public Service Act*.

Salary and expenses

(10) The members of the Commission shall be paid such remuneration and expenses as are fixed by the Lieutenant Governor in Council. 1987, c. 35, s. 94.

Superintendent

95.—(1) The office of Superintendent of Pensions is continued.

Appointment

(2) The Superintendent shall be appointed by the Commission.

Chief administrative officer

(3) The Superintendent is the chief administrative officer of the Commission.

Powers and duties

(4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission.

Delegation of powers and duties

(5) The Superintendent may delegate in writing any power or duty of the Superintendent under this Act to any employee of the Commission, subject to any limitation or condition set out in the delegation. 1987, c. 35, s. 95.

Reciprocal agreements

96.—(1) The Commission may, subject to the approval of the Lieutenant Governor in Council,

(a) enter into agreements with the authorized representatives of another province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;

(b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Commission as the Commission may require; and

(c) delegate to a pension supervisory authority or the government of a designated jurisdiction such functions and powers under this Act as the Commission may determine and the Commission may accept similar delegations of functions and powers from a pension supervisory authority or the government of a designated jurisdiction.

Applicable law

(2) Where a pension plan required to be registered in Ontario is registered in a designated jurisdiction, the Commission by order may limit the application of this Act and the regulations to the pension plan and authorize the application of the law of the designated jurisdiction in respect of the pension plan. 1987, c. 35, s. 96.

Duty of Commission

97. It is the duty of the Commission,

(a) to administer this Act and the regulations;

(b) to promote the establishment, extension and improvement of pension plans throughout Ontario;

(c) to advise the Minister in respect of the business of the Commission; and

(d) to make recommendations to the Minister in respect of pension plans. 1987, c. 35, s. 97.

Research

98.—(1) It is a function of the Commission to conduct surveys and research programs and to compile statistical information related to pensions and pension plans.

Provision of information

(2) The Superintendent may request an employer or an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such persons shall comply with the request within a reasonable period of time.

Confidentiality

(3) The Commission shall use the information only for the purpose of compiling the statistical information. 1987, c. 35, s. 98.

Information

99.—(1) The Superintendent or the Commission may require an employer, an administrator or any other person to supply to the Superintendent or the Commission such inform-

ation in such form as is acceptable to the Superintendent or the Commission and within such time limits as specified for the purpose of ascertaining whether or not this Act and the regulations are being complied with.

Idem

(2) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Superintendent or the Commission.

Appraisal

(3) The Superintendent or the Commission may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuators or the Superintendent or the Commission may obtain the appraisal at the expense of the administrator.

Time

(4) The administrator shall deliver the appraisal to the Superintendent or the Commission within the period of time specified in the requirement or within such other period of time as the Superintendent or the Commission may specify.

Security

100. Every person entrusted by the Commission with the custody or control of money in the course of employment shall give security in the manner and form provided by the *Public Officers Act*. 1987, c. 35, s. 100.

R.S.O. 1980, c. 415

Liability of Commission, etc.

101. The Superintendent or a member of the Commission, or of the staff of the Commission is not personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Act or for alleged neglect or default in the execution in good faith of such a duty or authority.

Audit

102. The Provincial Auditor shall examine annually the accounts and financial transactions of the Commission. 1987, c. 35, s. 102.

Annual report

103.—(1) The Commission shall report annually to the Minister on the business of the Commission.

Idem

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1987, c. 35, s. 103.

GENERAL

Pension agency

104. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing benefits under this Act. 1987, c. 35, s. 104.

Transitional

105. Every pension plan that was registered and that continued to be qualified for registration under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this Act, shall be deemed to be registered upon the coming into force of this Act. 1987, c. 35, s. 105.

Extension of time

106. The Commission or the Superintendent may extend any time limit under this Act or the regulations before or after the expiration of the time if satisfied that there are reasonable grounds for applying for the extension, and may give such directions as the Commission or the Superintendent considers proper consequent upon the extension. 1987, c. 35, s. 106.

Interpretation, persons

107.—(1) The persons referred to in subsections (3) to (5) and (8) to (10) are the following:

1. The Superintendent.
2. Any person designated by the Superintendent or the Commission.

Interpretation, purposes

(2) The purposes mentioned in subsections (3) to (5) and (10) are the following:

1. The administration of this Act and the regulations.
2. The administration of the Guarantee Fund.
3. The enforcement of any section of this Act or the regulations.
4. The exercise of a power or the carrying out of a duty under this Act or the regulations.
5. The carrying out of an order made under this Act.

Entry

(3) For a purpose mentioned in subsection (2), a person mentioned in subsection (1) may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to a pension plan or pension fund.

Examinations

(4) A person mentioned in subsection (1) may make examinations, investigations and inquiries and may require the production of any book, paper, document or thing related to a pension plan or pension fund.

Samples or extracts

(5) A person mentioned in subsection (1) may make, take and remove or require the making, taking and removal of

copies or extracts related to an examination, investigation or inquiry for a purpose mentioned in subsection (2).

Reasonable times

(6) The authority under subsections (3) to (5) shall be exercised only at reasonable times.

Private residence

(7) Subsection (3) is not authority to enter a private residence without the consent of the occupier.

Removal of books, etc., for copying

(8) A person mentioned in subsection (1) who is making an examination, investigation or inquiry may, upon giving a receipt therefor, remove any books, papers, documents or things relating to the subject-matter of the examination, investigation or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out with reasonable dispatch and the books, papers, documents or things shall be returned forthwith after the copying is completed.

Copies

(9) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by a person mentioned in subsection (1) is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would have been admissible.

Application for warrant

(10) If an occupier of premises,

(a) denies entry or access to, through or over the premises to a person mentioned in subsection (1);

(b) instructs a person mentioned in subsection (1) to leave the premises;

(c) obstructs a person mentioned in subsection (1) who is acting for a purpose mentioned in subsection (2);

(d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a purpose mentioned in subsection (2),

a person mentioned in subsection (1) may apply to a justice of the peace for an inspection order under section 109.

Identification

(11) A person exercising a power under this section shall provide identification at the time of entry. 1987, c. 35, s. 107.

Obstruction

108.—(1) No person shall hinder or obstruct a person mentioned in subsection 107 (1) who is lawfully carrying out a duty under this Act.

Private residence

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1). 1987, c. 35, s. 108.

Order by justice of the peace

109.—(1) Where a justice of the peace is satisfied on evidence upon oath,

(a) that there are reasonable and probable grounds for believing that it is necessary,

(i) to enter and have access to, through and over any premises,

(ii) to make examinations, investigations or inquiries, and

(iii) to make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things, for a purpose mentioned in subsection 107 (2); and

(b) that a person mentioned in subsection 107 (1),

(i) has been denied entry to the premises,

(ii) has reasonable grounds to believe that entry to the premises will be denied,

(iii) has been instructed to leave the premises,

(iv) has been obstructed, or

(v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing a person mentioned in subsection 107 (1) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as they call upon to assist them.

Execution of order

(2) An inspection order issued under this section shall be executed between 6 a.m. and 9 p.m. standard time unless the justice of the peace otherwise authorizes in the order.

Expiry of order

(3) An inspection order issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the inspection order is issued.

Ex parte application

(4) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises. 1987, c. 35, s. 109.

Offence

110.—(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Idem

(2) Every person who contravenes an order made under this Act is guilty of an offence. 1987, c. 35, s. 110.

Penalty

111.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than $25,000.

Corporation

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed is $100,000 and not as provided in subsection (1).

Officers, etc.

(3) Where a corporation is guilty of an offence under this Act, an officer, official, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to a fine of not more than $25,000.

Order for payment

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company.

Enforcement

(5) An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Time limit

(6) No proceeding under this Act shall be commenced after five years after the date when the subject-matter of the proceeding occurred or is alleged to have occurred. 1987, c. 35, s. 111.

Power to restrain

112. Where a provision of this Act or the regulations or a decision of the Commission or the Superintendent under this Act is contravened, in addition to another remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the Commission, of the Superintendent or of the administrator of a pension plan affected by the contravention. 1987, c. 35, s. 112.

Service

113.—(1) Any notice, decision, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class registered mail addressed to the person to whom it is to be given, served or delivered at his or her last known address.

Deemed service

(2) A notice, decision, order or other document sent by first class registered mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the seventh day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive the notice, order or other document, or did not receive it until a later date, through absence, accident, illness or other cause beyond his or her control.

General notice

(3) Where the Superintendent or the Commission is of the opinion that it is not reasonable to serve on or deliver to a person a notice or document required under this Act, the Superintendent or the Commission may authorize the service or delivery of the notice or document or the giving of reasonable notice of the contents of the notice or document to the person by public advertisement or otherwise as the Superintendent or the Commission may direct.

Idem

(4) The date on which the notice or document referred to in subsection (3) or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is given.

Time for actions by administrator

114. An administrator of a pension plan who is required to take an action under this Act or the regulations shall take the action within the prescribed period of time. 1987, c. 35, s. 114.

Conflict

115. In the event of a conflict between this Act and any other Act, this Act prevails unless the other Act states that it is to prevail over the *Pension Benefits Act, 1987*. 1987, c. 35, s. 115.

1987, c. 35

Regulations

116.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter referred to in this Act as prescribed by the regulations;

(b) prescribing the times for filing or the last dates for filing of documents that are required to be filed under this Act;

(c) prescribing reports that shall be submitted to the Commission, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared;

(d) prescribing benefits that are not guaranteed by the Guarantee Fund;

(e) prescribing assessments for the purposes of the Guarantee Fund and prescribing the classes of employers that shall pay such assessments;

(f) prescribing procedures that shall govern the appointments of members of pension committees and advisory committees;

(g) prescribing procedures that shall govern the establishment of advisory committees and the appointments of members of advisory committees;

(h) prescribing fees that shall be paid for copies of documents provided by the Commission;

(ha) prescribing fees, or the method of calculating fees, payable with respect to proceedings before the Superintendent or the Commission;

(hb) prescribing fees, or the method of calculating fees, payable for an application to wind up a pension plan or to withdraw surplus from a pension plan;

(i) prescribing the methods of calculating the values of assets and liabilities of pension funds;

(j) prescribing criteria that must be complied with before any surplus may be paid out of a pension fund;

(k) prescribing the rate or the method of determining the rate at which an employer shall pay moneys due from the employer under this Act on the winding up of a pension plan, and prescribing the manner of payment and to whom the payments shall be made;

(l) regulating or prohibiting the investment of moneys from pension funds and prescribing investments or classes of investments in which such moneys may be invested;

(m) prescribing requirements for retirement savings contracts and life annuity contracts between members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made, and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;

(n) requiring the payment of interest on any amount required to be paid under the Act from the date the payment is due and prescribing the rate of interest and the method of calculating interest if such rate or method is not otherwise specified;

(o) prescribing forms and providing for their use;

(p) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served shall be given, transmitted, filed or served;

(q) prescribing requirements that shall be complied with in the administration of a pension plan;

(r) prescribing records that shall be kept by the administrator of a pension plan and the period of time for which such records shall be retained by the administrator;

(s) requiring the audit of pension plans or classes of pension plans and pension funds and classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;

(t) prescribing the manner of determining the portion of a benefit or pension, that is attributable to employment before the date on which this Act comes into force or that is attributable to employment after the date on which this Act comes into force;

(u) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada);

R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9
R.S.C. 1985, c. O-9

(v) governing the wind up or partial wind up of of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind up, including priorities in allocation of assets;

(w) governing the receiving, holding and disbursing of benefits by any agency established or designated under this Act;

(x) exempting pension plans, pension funds, employees, administrators, trade unions or other persons from the application of this Act or the regulations or from any section of this Act or the regulations;

(y) prescribing terms and conditions governing the conversion of a defined benefit to a defined contribution benefit;

(z) prescribing the manner of calculating the commuted value of a deferred pension or a pension benefit for the purpose of section 49.

Scope of regulations

(2) A regulation may be general or particular in its application and may be limited as to time or place or both.

Adoption of codes in regulations

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with a code, formula, standard or procedure so adopted.

Terms, conditions, qualifications, requirements

(4) Any provision of a regulation may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation. 1987, c. 35, s. 116.

REGULATION TO AMEND
ONTARIO REGULATION 708/87
MADE UNDER THE
PENSION BENEFITS ACT, 1987

1.-(1) The definition of "past service unfunded actuarial liability" in subsection 1(2) of Ontario Regulation 708/87 is revoked and the following substituted therefor:

"past service unfunded actuarial liability" means the amount of going concern unfunded actuarial liability that results from,

(a) the provision of benefits with respect to employment before the effective date of the pension plan;

(b) an amendment to the pension plan that provides benefits from employment before the date of the amendment, if the employment was not previously recognized for purposes of the provision of benefits; or

(c) in the case of a pension plan governed by a collective agreement or an arbitration award made under the Labour Relations Act that was in effect on the 1st day of January, 1988, an amendment to the pension plan in accordance with the terms of the agreement or award that increases benefits under the plan, if the increase;

(i) is in respect of employment before the effective date of the amendment; and

(ii) was not previously recognized for purposes of the provision of benefits.

(2) The definition of "solvency liabilities" in the said subsection 1(2) is revoked and the following substituted therefor:

"solvency liabilities" means an amount that is not less than the liabilities of the pension plan determined as if the pension plan had been terminated and taking into account the requirements of section 75 of the Act but not taking into account,

(a) liabilities for escalated adjustments; and

(b) liabilities for early retirement options and benefits that are provided under the pension plan only in the event of the discontinuance of all or a significant portion of the business carried on at a particular location;

2. Subsection 9(1) of the said Regulation is revoked and the following substituted therefor:

(1) If special payments greater than the minimum payment required under subsection 5(1) are made by,

(a) a special payment made in advance; or

(b) an additional payment of any kind,

the amount of the special payments for subsequent periods may be reduced by the amount of the excess.

3.-(1) Subsection 11(1) of the said Regulation is amended by inserting at the beginning thereof "Subject to subsection (1a)".

(2) Section 11 of the said Regulation is amended by adding thereto the following subsections:

(1a) If the administrator of a pension plan has reason to believe on an anniversary date of a report that the pension plan is underfunded, the administrator shall take the action described in subsection (1) on that anniversary date and at intervals of not more than one year thereafter until

such time as a report indicates that the pension plan is not underfunded.

(1b) For the purpose of subsection (1a), a pension plan is considered to be underfunded on a particular date,

(a) if the transfer ratio of the pension plan on that date is less than 0.08; or

(b) if the product of the solvency liabilities under the pension plan, on that date, and the difference between one and the transfer ratio of the pension plan, on that date, exceeds $1,000,000.